Supreme Court, U. S.
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APPENDIX

In the Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-1472

DOUGLAS M. COSTLE, ADMINISTRATOR,
ENVIRONMENTAL PROTECTION AGENCY,
Petitioner

—*v.*—

PACIFIC LEGAL FOUNDATION, ET AL.

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FILED: MARCH 23, 1979
PETITION GRANTED: JUNE 11, 1979

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RELEVANT DOCKET ENTRIES

DATE	FILINGS-PROCEEDINGS
1977	
Aug 22	FILED, AS OF AUGUST 18, ORIG AND SIX COPIES OF A PETITION TO REVIEW AN ORDER OF THE ENVIRONMENTAL PROTECTION AGENCY. —dmf—[77-2909]
	Filed as of August 31, 1977, original and six copies of a petition to review an order of the Environmental Protection Agency—dmf—[77-3008]
Nov 16	REC'D (LATE), AS OF OCT 20, CERT LIST OF RECORD PURSUANT TO RULE 17(b) FRAP.—dmf—
Dec. 28	Filed, as of 12/23/77, order (G & A) upon due consideration, the court issues the following orders: a) the record and all other documents rec'd in these petitions for review, including the amicus curiae memorandum, are ordered filed; b) respondents' motion to consolidate is GRANTED; and c) that the terms, conditions and requirements of NPDES Permit No. CA0109991 on review in these consolidated cases are hereby STAYED with the exception that effluent limitations which were applicable to the Hyperion Plant and which were in effect for the discharges from the Hyperion Plant on 1/1/77, and the monitoring and reporting requirements related thereto shall remain in full force and effect pending final disposition of these consolidated cases or further order of this court. d) the Clerk is directed to calendar these consolidated cases as an expedited appeal, to fix an abbreviated briefing schedule and to notify all counsel of the schedule. jr
1978	
Feb 16	Filed, as of Feb 10, order (Br), Upon due consideration, the volume of exhibits to petitioners' brief heretofore received is ordered filed.—dmf—

DATE	FILINGS-PROCEEDINGS

1978

Feb 16 Filed, as of Feb 10, 25 copies of Exhibits to Petitioners' Brief.—dmf—

Feb 27 FILED AS OF 2/6/78, CERT ADMIN RECORD IN APPEAL IN ONE VOL, VOL I., PLDGS, THREE CERT COPIES. ers

Mar 31 Filed as of 3/29/78, Order (G,A) IT IS ORDERED as follows: (1) Paragraph (c) of this court's stay order of 12/23/78, was meant to include a stay of enforcement of NPDES Permit No. CA0109991 by the USA. (2) The resps and the USA are hereby restrained from instituting such action and from further prosecuting *USA v. City of LA*, CD Cal, Civ No. 77-3047-HP, pending final disposition of these consolidated cases or further order of this court by the panel to which these consolidated cases are assigned for disposition. ers

Apr 10 ARGUED AND SUBMITTED BEFORE MERRILL, SNEED, CJJ, EAST, DJ. jmr

Aug 10 As of Aug. 9, ORDERED OPINION (SNEED) FILED & JUDG TO JUDG TO BE FILED & ENTD

Aug 10 As of Aug. 9, Filed opinion—REMANDED.

Aug 10 As of Aug. 9, Filed & Entd Judgment.—fn—

Nov 28 Filed, as of 11/24/78, order (M, S & East) The petition for rehearing is denied and the suggestion for rehearing en banc is rejected. nw

1979

April 13 Received 3/29/79, SC notice of filing petition for cert. on March 23, 1979, assigned SC#78-1472. pn

June 18 Filed certified copy of SC order of June 11, 1979, granting certiorari. (copies to panel) pn.

California Regional Water Quality Control Board Los Angeles Region (213) 620-4460 Order No. 75-100 Waste Discharge Requirements	Environmental Protection Agency Region IX (415) 556-3450 Permit No. CA0109991 Authorization to Discharge under the National Pollutant Discharge Elimination System-Federal Water Pollution Control Act (33 U.S.C. 125 et. seq.)

FOR
City of Los Angeles
Hyperion Treatment Plant

The California Regional Water Quality Control Board, Los Angeles Region (hereafter Board) and the Regional Administrator, Environmental Protection Agency, Region IX, find that:

1. City of Los Angeles has filed a report of waste discharge and has applied for a permit to discharge wastes under the National Pollutant Discharge Elimination System.

2. Hyperion Treatment Plant, located at 12000 Vista Del Mar Boulevard, Playa Del Rey, California, currently discharges an average of 340 mgd (million gallons per day) of municipal wastewater to navigable waters or tributaries thereto (Santa Monica Bay).

3. Approximately 100 mgd of the flow currently receives secondary treatment by the activated sludge process; the balance is primary effluent.

   a. The combined treated effluent (primary and secondary) is discharged through an outfall terminating 26,525 feet offshore in 187 feet of water. This discharge point, identified as Discharge Serial No. 002, is at Latitude 33° 54′ 45″ N, Longitude 118° 31′ 15″ W.

   b. Separated solids are digested, screened, and diluted one volume digested sludge with three

volumes secondary effluent prior to discharge through an outfall terminating at 35,572 feet offshore at the head of a submarine canyon at a depth of 300 feet. This discharge point, identified as Discharge Serial No. 003, is at Latitude 33° 55′ 35″ N, Longitude 118° 33′ 15″ W.

c. During wet weather when flow exceeds 650 mgd due to infiltration and inflow approximately 0 to 20 million gallons of diverted flow from the secondary settling tanks are discharged for periods of 1 to 8 hours through an outfall which terminates 5,364 feet offshore in 50 feet of water. This wet weather flow occurs approximately once or twice a year. This outfall is also used non-routinely for gravity discharge in cases of power failure at the pumping plant. This non-routine flow occurs approximately two to three times a year for a period less than one hour. This discharge consists of 0 to 4 million gallons of chlorinated secondary effluent. The outfall is also flushed weekly with chlorinated secondary effluent for a period of 3 hours at a flowrate of 100 mgd. This discharge point is identified as Discharge Serial No. 001, at Latitude 33° 55′ 05″ N, Longitude 118° 26′ 52″ W.

4. City of Los Angeles discharges wastes from Hyperion Treatment Plant under requirements contained in Order 74-329 and NPDES permit number CA0109991, issued, respectively, by this Board and the Regional Administrator on November 18, 1974. This Order makes the following significant modification to Order No. 74-329 and NPDES permit issued on November 18, 1974:

   Discharge Serial No. 003, which was not included in Order No. 74-329 and the NPDES permit issued on November 18, 1974, is now regulated by this Order.

5. The City of Los Angeles is participating in a joint study with the County Sanitation Districts of Los Angeles County and the County Sanitation Districts of Orange County to develop an optimum long-range sewage sludge disposal plan. The study is entitled "Regional Wastewater Solids Management Program—Los Angeles—Orange County Metropolitan Area".

6. The City of Los Angeles expects to have interim sludge handling facilities in operation by December 31, 1976. Studies should be conducted by the City of Los Angeles to determine the best method of disposal of the liquid fraction or supernatant from these interim facilities so as not to cause a violation of discharge requirements contained in this permit.

7. The State Water Resources Control Board adopted the "Water Quality Control Plan—Ocean Waters of California" on July 6, 1972. This plan contains water quality objectives for the Pacific Ocean. The Regional Administrator approved this plan on August 18, 1972, thereby establishing this plan as a State—Federal water quality standard.

8. The Board adopted a Water Quality Control Plan for Los Angeles River Basin on March 10, 1975. The Water Quality Control Plan contains water quality objectives for the nearshore and offshore zones of the Pacific Ocean.

9. The beneficial uses of the receiving waters are:

   Nearshore Zone: (includes water generally less than 30 feet deep of those waters within 1,000 feet of the shoreline): aesthetic enjoyment; ocean water contact sport (swimming, surfing, skindiving); propagation and sustenance of marine life, including kelp and shore birds; shellfish harvesting; scientific research and training; sport fishing; commercial fishing; pleasure boating; commercial and naval shipping; and industrial water supply.

Offshore Zone: (includes all waters located between the nearshore zone and the seaward boundary of the Region): aesthetic enjoyment; propagation and sustenance of marine life; scientific research and training; sport fishing; commercial fishing; pleasure boating; commercial and naval shipping; and industrial water supply.

10. Effluent limitations, national standards of performance, toxic and pretreatment effluent standards, and ocean discharge criteria established pursuant to Section 208(b), 301, 302, 303(d), 304, 306, 307, 403, and 405 of the Federal Water Pollution Control Act and amendments thereto are applicable to the discharges.

The Board and Regional Administrator have notified the discharger and interested parties and persons of their intent to prescribe waste discharge requirements and issue a permit for this discharge and have provided them with an opportunity to submit their written views and recommendations.

The Board and the Regional Administrator in a public hearing heard and considered all comments pertaining to the discharge and to the tentative requirements.

This Order and permit shall take effect 30 days from the date of signature.

IT IS HEREBY ORDERED, that City of Los Angeles, in order to meet the provisions contained in Division 7 of the California Water Code and regulations adopted thereunder, and the provisions of the Federal Water Pollution Control Act and regulations and guidelines adopted thereunder, shall comply with the following:

A. Effluent Limitations

1. Wastes discharged shall be limited to treated municipal wastewater, as proposed.

2. The discharge of an effluent in excess of the following limits for Discharge Serial No. 001 is prohibited:

Parameter	Units	30-Day Average	7-Day Average	Daily Maximum
BOD_5 20°C	lbs/day*	25,000	37,500	50,000
	mg/1	30	45	—
Suspended solids	lbs/day*	25,000	37,500	50,000
	mg/1	30	45	—
Fecal coliform	MPN/100 ml	200	400	2,000
Oil and grease	lbs/day*	8,340	—	12,500
	mg/1	10	—	15
Settleable solids	ml/1	0.1	—	0.2
Turbidity	TU	50	—	75
Floating particulates	mg/1 (dry weight)	1.0	—	2.0

* Based on a design capacity of 100 mgd.

3. The discharge of an effluent in excess of the following limits for discharge Serial No. 002 is prohibited.

Parameter	Units	30-Day Average	Daily Maximum
BOD_5 20°C	lbs/day*	438,000	665,000
	mg/1	125	190
Suspended solids	lbs/day*	385,000	579,000
	mg/1	110	165
Settleable solids	ml/1	0.7	1.0
Oil and grease	lbs/day*	70,000	105,000
	mg/1	20	30

* Based on a design capacity of 420 mgd.

4. As ordered by the schedule of compliance in F-1 below, the discharge of an effluent in excess of the following limits for Discharge Seriai No. 002 is prohibited:

Parameter	Units	30-Day Average	7-Day Average	Daily Maximum
BOD_5 20°C	lbs/day*	105,000	158,000	210,000
	mg/1	30	45	—
Suspended solids	lbs/day*	105,000	158,000	210,000
	mg/1	30	45	—
Fecal coliform	MPN/100 ml	200	400	2,000
Oil and grease	lbs/day*	35,000	—	52,500
	mg/1	10	—	15
Settleable solids	ml/1	0.1	—	0.2
Turbidity	TU	50	—	75
Floating particulates	mg/1 (dry weight)	1.0	—	2.0

5. The discharge of an effluent from Discharge Serial Nos. 001 and 002 in excess of the following limits is prohibited:

Parameter	Units	30-Day Average	Maximum Daily
Arsenic	lbs/day*	35	70
	mg/1	0.01	0.02
Copper	lbs/day*	700	1050
	mg/1	0.2	0.3
Lead	lbs/day*	350	700
	mg/1	0.1	0.2

* Based on a design capacity of 420 mgd.

6. The discharge of an effluent from Discharge Serial Nos. 001 and 002 in excess of the following limits after July 1, 1978, is prohibited; provided, however, except as to residual chlorine, if it can be conclusively demonstrated by any discharger to ocean water tributaries that the treatment process required by Water Code Section 13379 (a and b), plus source control, will not result in complete compliance with the following limits by July 1, 1978, the Board and Regional Administrator may allow additional time for compliance not to exceed July 1, 1983:

Constituents	Discharge Rate (lbs/day)* 30-Day Average	Discharge Rate (lbs/day)* Daily Maximum	Concentration Limit(mg) 30-Day Average	Concentration Limit(mg) Daily Maximum
Silver	70	140	0.02	0.04
Cadmium	70	105	0.02	0.03
Total chromium	17.5	35	0.005	0.01
Mercury	3.5	7.0	0.001	0.002
Nickel	350	700	0.1	0.2
Zinc	1050	1750	0.3	0.5
Cyanide	350	700	0.1	0.2
Phenolic compounds (expressed as phenol)	1750	3500	0.5	1.0
Ammonia (expressed as nitrogen)	105,100	140,000	30.0	40.0
Total identifiable chlorinated hydrocarbons	7.0	14	0.002	0.004
Toxicity concentration	—	—	1.5 tu	2.0 tu
Residual chlorine	—	—	1.0	2.0

* Based on a design capacity of 420 mgd.

7. The discharge of an effluent in excess of the following limits from Discharge Serial No. 003 is prohibited:

Parameter	Units	30-Day Average	Maximum Daily
Total solids	lbs/day*	900,000	1,350,000
	mg/1	18,000	—

* Based upon a flow of 6.0 mgd.

8. The discharge of an effluent from Discharge Serial No. 003 in excess of the following limits after July 1, 1978, is prohibited; provided, however, except as to residual chlorine, if it can be conclusively demonstrated by any discharger to ocean water tributaries that the treatment process required by Water Code Section 13379 (a and b), plus source control, will not result

in complete compliance with the following limits by July 1, 1978, the Board and Regional Administrator may allow additional time for compliance not to exceed July 1, 1983:

Constituents	Discharge Rate (lbs/day)*		Concentration Limit(mg)	
	30-Day Average	Daily Maximum	30-Day Average	Daily Maximum
Arsenic	0.50	1.00	0.01	0.02
Cadmium	1.00	1.50	0.02	0.03
Total chromium	0.25	0.50	0.005	0.01
Copper	10.0	15.0	0.2	0.3
Lead	5.00	10.0	0.1	0.2
Mercury	0.05	0.10	0.001	0.002
Nickel	5.00	10.0	0.1	0.2
Silver	1.00	2.00	0.02	0.04
Zinc	15.0	25.0	0.3	0.5
Cyanide	5.00	10.0	0.1	0.2
Phenolic compounds (expressed as phenol)	25.0	50.0	0.5	1.0
Ammonia (expressed as nitrogen)	1,500	2,000	30	40
Total identifiable chlorinated hydrocarbons	0.10	0.20	0.002	0.004
Toxicity concentration	—	—	1.5(tu)	2.0(tu)
Residual chlorine	—	—	1.0	2.0

* Based upon a flow of 6 mgd.

9. The daily discharge rate shall be obtained from the following calculation for any calendar day:

$$\text{Daily discharge rate} = \frac{8.34}{N} \sum_{1}^{N} Q_i \cdot C_i$$

in which N is the number of samples analyzed in any calendar day. Q_i and C_i are the flow rate (MGD) and the constituent concentration (mg/1) respectively, which are associated with each of the N grab samples which may be taken in any calendar day. If a composite sample is taken, C_i is the concentration measured in the composite sample, and Q_i is the average flow rate occurring during the period over which samples are composited.

10. The 7-day and 30-day average discharge rates shall be the arithmetic average of all the values of daily discharge rate calculated using the results of analyses of all samples collected during any 7 and 30 consecutive calendar day periods, respectively. If fewer than four samples are collected and analyzed during any 30 consecutive calendar day period, compliance with the 30-day average discharge rate limitation shall not be determined. If fewer than three samples are collected and analyzed during any 7-day period, compliance with the 7-day average discharge rate limitation shall not be determined.

11. The 7-day, or 30-day, average concentration, other than the fecal coliform bacteria, means the arithmetic mean of measurements made during a 7, or 30, consecutive calendar day period, respectively. The 7-day, or 30-day, average concentration for fecal coliform bacteria means the geometric mean of measurements made during a 7, or 30, consecutive calendar day period, respectively. The geometric mean is the nth root of the product of n numbers.

12. For Discharge 001, the arithmetic mean of the BOD_5 and suspended solids values, by weight, for effluent samples collected in a period of 30 consecutive calendar days shall not exceed 15 percent of the arithmetic mean of the values, by weight, for influent samples collected at approximately the same times during the same period. For Discharge 002, compliance with this condition shall be as ordered by the compliance schedule in item F-1.

13. The pH of wastes discharged shall at all times be within the range 6.5 to 9.0.

14. The temperature of wastes discharged shall not exceed 100°F.

15. Radioactivity in the effluent shall not exceed the limits specified in Title 17, Section 5, Subchapter 4, Group 3, Article 3, Section 30269 of the California Administrative Code.

B. Discharge Prohibition

1. As ordered by the schedule of compliance in Provision F-1 below, the discharge of sludge through Discharge Serial No. 003 shall be terminated.

2. For the purposes of this Order, sludge shall be defined as scum, grit, screenings, and sludge collected from headworks and primary clarifiers; waste activated sludge collected from aeration units and secondary clarifiers; digested sludge collected from anaerobic digesters; and the solids fraction collected from sludge separation units or drying beds.

3. As used in this order, Phase I shall mean the facilities necessary to provide for the termination of no less than the first ⅓ of the sewage sludge presently discharged. Plase II shall mean the facilities necessary to provide for the termination of no less than an additional ⅓ of the sewage sludge presently discharged. Phase III shall mean the facilities necessary to provide for the termination of the discharge of the final portion of sewage.

c. The discharger shall comply with the schedule of compliance as outlined in Provision F-1 below to develop the "Regional Wastewater Solids Management Program-Los Angeles-Orange County Metropolitan Area" and implement the recommended program for ultimate disposal of wastewater solids.

D. Receiving Water Limitations

1. As ordered by the schedule of compliance as outlined in F-1 below, the discharge shall not cause the following limits to be exceeded after initial dilution after July 1, 1977:

Parameter	Units	Average	Maximum
Floating Particulates	mg dry weight/m²	1.0	1.5
Toxicity	Toxicity units	—	0.05
Grease and Oil	mg/m²	10	20

2. The wates discharged shall not cause receiving waters to contain any substance in concentrations toxic to human, animal, plant, or fish life.

3. Wastes discharged shall not cause the appearance of grease, oil or oily slick, or foam in the receiving waters.

4. Wastes discharged shall not cause the formation of sludge banks or deposits or create a nuisance due to odors or unsightliness along shores or beaches.

5. Wastes discharged shall not cause objectionable odors to emanate from the receiving waters.

6. No sewage solids or other physical evidence of waste discharge shall be visible at any time in the water or on beaches, shores, rocks, or structures.

7. The salinity of the receiving waters shall not be changed by the discharge to an extent such as to be harmful to desirable biota.

8. Nutrient materials contained in wastes discharged shall not cause objectionable aquatic growths or degrade indigenous biota.

9. Marine communities, including vertebrate, invertebrate, and plant species, shall not be degraded.

10. The pH of the receiving waters shall not be changed at any time by more than 0.2 pH units from that which occurs naturally outside the zone of initial dilution.

11. Wastes discharged shall not alter the color of the receiving waters nor create a visual contract with the natural appearance of the water.

12. Dissolved oxygen concentrations outside the zone of initial dilution shall not at any time be depressed more than 10 percent from that which occurs naturally excluding effect of upwelling.

13. The discharge shall not cause the following bacteriological limitations to be exceeded in the following areas:

    a. Within a zone bounded by the shoreline and a distance of 1,000 feet from the shoreline or the 30-foot depth contour, whichever is further from the shoreline, and in areas outside this zone used for body-contact sports, the following bacteriological objectives shall be maintained throughout the water column:

        Sample of water from each sampling station shall have a most probable number of coliform organisms less than 1,000 per 100 ml (10 per nl); provided that not more than 20 percent of the samples at any sampling station, in any 30-day period, may exceed 1,000 per 100 ml (10 per ml), and provided further that no single sample when verified by a repeat sample taken within 48 hours shall exceed 10,000 per 100 ml (100 per ml).

    b. At all areas where shellfish may be harvested for human consumption, the following bacteriological objectives shall be maintained throughout the water column:

        The median total coliform concentration shall not exceed 70 per 100 ml, and not more than 10 percent of the samples shall exceed 230 per 100 ml.

14. The transmittance of natural light shall not be significantly reduced at any point outside the initial dilution zone, such that the mean of sampling results for ayn consecutive 30-day period would be beyond one standard deviation of the mean determined for natural levels for the same period.

15. The concentration in marine sediments of substances listed in item A8 above shall not be significantly increased above that present under natural conditions.

16. The rate of deposition of inert solids and the characteristics of inert solids in ocean sediments shall not be changed such that benthic communities are degraded.

17. The concentration of organic materials in marine sediments shall not be increased above that which would degrade marine life.

18. The dissolved sulfide concentration of waters in and near sediments shall not be significantly increased above that present under natural conditions.

19. The natural taste, odor, and color of fish, shellfish, or other marine resources used for human consumption shall not be altered.

E. General Requirements

1. Neither the discharge nor any treatment of waste shall cause pollution or nuisance.

2. This discharge shall not cause a violation of any applicable water quality standard for receiving waters adopted by the Regional Board or the State Water Resource Control Board

as required by the Federal Water Pollution Control Act and regulations adopted thereunder. If more stringent applicable water quality standards are promulgated or approved pursuant to Section 303 of the Federal Water Pollution Control Act, or amendments thereto, the Board will revise and modify this Order in accordance with such more stringent standards.

3. Odors of sewage origin shall not be perceivable beyond the limits of the treatment plant.

4. Standby or emergency power facilities and/or storage capacity or other means shall be provided so that in the event of plant upset or outage due to power failure or other cause, discharge of raw or inadequately treated sewage does not occur.

5. The Board and Regional Administrator shall be notified immediately by telephone of the presence of adverse conditions in the receiving waters or on beaches and shores as a result of this discharge; written confirmation shall follow within 24 hours.

6. Any diversion from or bypass of facilities, including the waste collection system, necessary to maintain compliance with the terms and conditions of this permit is prohibited, except (a) where unavoidable to prevent loss of life or severe property damage, or (b) where excessive storm drainage or runoff would damage any facilities necessary for compliance with the effluent limitations and prohibitions of this permit. The permittee shall immediately notify the Board and the Regional Administrator by phone and in writing of each such diversion or bypass, in accordance with procedures outlined in the attached Standard Provisions. The written confirmation shall include information relative to the location, estimated

volume, date and time, duration, cause, and remedial measures taken to effect cleanup and/or to prevent recurrence. Immediate measures shall be initiated to clean up wastes due to any such bypass or diversion and to abate the effects thereof or, in the case of threatened pollution or nuisance, to take other necessary remedial action.

7. Notwithstanding E6, the bypassing of untreated waste to the ocean is prohibited.

F. Provisions

1. City of Los Angeles shall comply with the following time schedule to assure compliance with the effluent and receiving water limitations listed in items A-4, A-6, A-8, A-12, and D-1, the discharge prohibition of item B-1, and the ultimate disposal of sewage sludge provision of item C:

Task	Completion Date	Report of Compliance
A-4 and A-12:		
Complete draft facility plan	December 19, 1975	December 31, 1975
Progress report	July 1, 1976	July 15, 1976
Complete final plans and specifications	December 1, 1976	December 15, 1977
Award contract and begin construction	January 1, 1977	January 15, 1977
Progress reports	July 1, 1977 January 1, 1978 July 1, 1978 January 1, 1979	July 15, 1977 January 15, 1978 July 15, 1978 January 15, 1979
Complete construction	September 1, 1979	September 15, 1979
Operational level attained	October 1, 1979	October 15, 1979

Task	Completion Date	Report of Compliance
A-6 and A-8:		
Progress reports	January 1, 1976 July 1, 1976 January 1, 1977 July 1, 1977 January 1, 1978	January 15, 1976 July 15, 1976 January 15, 1977 July 15, 1977 January 15, 1978
Demonstration of compliance with effluent limitations	July 1, 1978	July 15, 1978
D-1		
Progress reports	January 1, 1976 July 1, 1976 January 1, 1977	January 15, 1976 July 15, 1976 January 15, 1977
Demonstration of compliance with limitations	July 1, 1977	July 15, 1977
B-1		
Completion of approvable plans and specifications for Phases I, II and III	not later than 6 months from date of concept approval	***
Award contract and begin construction	not later than 9 months from date of concept approval	***
Receive delivery of Phase I dewatering equipment	not later than 15 months from the date of conceptual approval, but in no case later than December 31, 1976	***
Complete construction of Phase I and achieve operational level	not later than 18 months from date of concept approval	***
Complete construction of Phase II and achieve operational level	not later than 24 months from date of concept approval	***
Complete construction of Phase III and achieve operational level	not later than 30 months from date of concept approval	***

*** report to be submitted within 15 days of date specified for completion of compliance schedule task.

Task	Completion Date	Report of Compliance
C		
Progress Reports on Program for Ultimate Disposal of Sludge	October 31, 1975 July 1, 1976 January 1, 1977 July 1, 1977 January 1, 1978	November 15, 1975 July 15, 1976 January 15, 1977 July 15, 1977 January 15, 1978
Submit a schedule for implementation of a program for ultimate disposal of wastewater solids	October 31, 1978	November 15, 1987

The discharger shall submit to the Board and the Regional Administrator on/or before each compliance report date, a report detailing his compliance or noncompliance with the specific schedule date and task.

If noncompliance is being reported, the reasons for such noncompliance shall be stated, plus an estimate of the date when the discharger will be in compliance. The discharger shall notify the Board and the Regional Administrator by letter when he has returned to compliance with the time schedule.

2. This Order includes the attached "Standard Provisions".

3. This Order includes items 1, 2, 3, and 4 of the attached "Reporting Requirements".

4. This Order includes the attached "General Monitoring and Reporting Provisions".

5. This Order expires on February 1, 1977, and City of Los Angeles must file a Report of Waste Discharge in accordance with Title 23, California Administrative Code, not later than 180 days in advance of such date as application for issuance of new waste discharge requirements.

6. A copy of these waste discharge specifications shall be maintained at the discharge facility so as to be available at all times to operating personnel.

7. In the event of any change in name, ownership, or control of these waste disposal facilities, the discharger shall notify the Board and the Regional Administrator, of such change and shall notify the succeeding owner or operator of the existence of this order by letter, copy of which shall be forwarded to the Board and the Regional Administrator.

8. Any discharge of wastes at any point(s) other than specifically described in this permit is prohibited, and constitutes a violation of the permit.

9. The discharger shall file a comprehensive report with the Board and Regional Administrator by November 19, 1975, detailing measures to be taken to control inflow and infiltration into the Hyperion system. Included shall be an implementation schedule outlining specific tasks and dates to mitigate inflow and infiltration.

10. Order No. 74-329 and NPDES permit number CA0109991, issued November 18, 1974, are hereby rescinded.

11. This Order does not alleviate the responsibility to obtain other necessary local, state and federal permits to construct facilities necessary for compliance with this Order; nor does this Order prevent imposition of additional standards, requirements, or conditions by any other regulatory agency.

This certifies that the foregoing is a full, true, and correct copy of an order adopted by the California Regional Water Quality Control Board, Los Angeles Region, and of a National Pollutant Discharge Elimination System permit issued by the Environmental Protection Agency,

Region IX. The order and permit shall become effective 30 days from the date of signature.

/s/ Raymond M. Hertel
RAYMOND M. HERTEL
Executive Officer

Date: August 18, 1975

/s/ Richard L. O'Connell
RICHARD L. O'CONNELL
Director,
Enforcement Division,
for the Regional
Administrator

Date: August 18, 1975

STANDARD PROVISIONS

1. The requirements prescribed herein do not authorize the commission of any act causing injury to the property of another, nor protect the discharger from his liabilities under federal, state, or local laws, nor guarantee the discharger a capacity right in the receiving waters.
2. The discharge of any radiological, chemical, or biological warfare agent or high level radiological waste is prohibited.
3. The discharger shall require any industrial user of the treatment works to comply with applicable service charges and toxic and pretreatment standards promulgated in accordance with Sections 204(b), 307, and 308 of the Federal Water Pollution Control Act or amendments thereto. The discharger shall require each individual user to submit periodic notice (over intervals not to exceed nine months) of progress toward compliance with applicable toxic standards developed pursuant to the Federal Water Pollution Control Act or amendments thereto. The discharger shall forward a copy of such notice to the Board and the Regional Administrator.
4. The discharger shall permit the Regional Board, the Regional Administrator, or their authorized representatives:
   (a) Entry upon premises in which an effluent source is located or in which any required records are kept;
   (b) Access to copy any records required to be kept under terms and conditions of this Order;
   (c) Inspection of monitoring equipment or records, and
   (d) Samping of any discharge.
5. All discharges authorized by this Order shall be consistent with the terms and conditions of this Order.

The discharge of any pollutant more frequently than or at a level in excess of that identified and authorized by this Order shall constitute a violation of the terms and conditions of this Order.

6. The discharger shall maintain in good working order and operate as efficiently as possible any facility or control system installed by the discharger to achieve compliance with the waste discharge requirements.
7. Collected screenings, sludges, and other solids removed from liquid wastes shall be disposed of at a legal point of disposal, and in accordance with the provisions of Division 7.5 of the California Water Code. For the purpose of this requirement, a legal point of disposal is defined as one for which waste discharge requirements have been prescribed by a regional water quality control board and which is in full compliance therewith. This provision does not apply to the sludge discharge through outfall serial No. 003.
8. After notice and opportunity for a hearing, this Order may be terminated or modified for cause, including, but not limited to:
   (a) Violation of any term or condition contained in this Order;
   (b) Obtaining this Order by misrepresentation, or failure to disclose all relevant facts;
   (c) A change in any condition that requires either a temporary or permanent reduction or elimination of the authorized discharge.
9. If a toxic effluent standard or prohibition (including any schedule of compliance specified in such effluent standard or prohibition) is established under Section 307(a) of the Federal Water Pollution Control Act, or amendments thereto, for a toxic pollutant which is present in the discharge authorized herein and such standard or prohibition is more stringent than any limitation upon such pollutant in this Order, the Board and the Regional Administrator will revise or

modify this Order in accordance with such toxic effluent standard or prohibition and so notify the discharger.

10. There shall be no discharge of harmful quantities of oil or hazardous substances, as specified by regulation adopted pursuant to Section 311 of the Federal Water Pollution Control Act, or amendments thereto.

11. In the event the discharger is unable to comply with any of the conditions of this Order due to:

    (a) breakdown of waste treatment equipment;

    (b) accidents caused by human error or negligence; or

    (c) other causes such as acts of nature,

    the discharger shall notify the Executive Officer and the Regional Administrator by telephone as soon as he or his agents have knowledge of the incident and confirm this notification in writing within two weeks of the telephone notification. The written notification shall include pertinent information explaining reasons for the non-compliance and shall indicate what steps were taken to correct the problem and the dates thereof, and what steps are being taken to prevent the problem from recurring.

12. *Pretreatment of Industrial Wastewaters*

    (a) Submittal of Information

    The discharger shall submit to the Board and the Regional Administrator:

    (1) not later than December 18, 1975, the information described in Section IV of EPA Form 7550-22 for each major contributing industry;

    (2) at least thirty days prior to its initiation, notification of any new introduction of pollutants from sources which, if they were to discharge to the waters

of the United States, including the territorial seas, would be

(a) a new source as defined in Section 306 of the Act, or

(b) a major contributing industry subject to Section 301 of the Act. The notification in (a) & (b) above shall include the information described in Section IV of EPA Form 7550-22;

(3) notification of any substantial change in volume or character of pollutants discharged by an existing source. Such notice shall include the information described in Section IV of EPA Form 7550-22 and the anticipated impact, if any, on the quality or quantity of effluent discharged from the discharger's facility.

After receipt and review of such information, the Board or the Regional Administrator may revise or modify the conditions of this order including any necessary effluent limitations for any pollutants not identified and limited herein.

(b) Control of Industrial Pollutants

(1) The discharger shall require all industrial users of its treatment works to comply with the requirements of Section 204 (b), if applicable, and Section 307 of the Act. All existing major contributing industries shall be required to comply with pretreatment standards for prohibited wastes and incompatible pollutants within the shortest reasonable time but not later than three years from the date of their promulgation. New industrial sources shall be required to comply with pretreatment standards promulgated pursuant to Sec-

tion 307(c) of the Act upon initiation of their discharge to the discharger's facilities.

(2) The discharger shall by December 18, 1975, submit to the Board and the Regional Administrator for each major contributing industry either (a) evidence of compliance with pretreatment standards promulgated pursuant to Section 307(b) of the Act, or (b) a report, on a form to be furnished by the Administrator which shall set forth the effluent limits to be achieved and an implementation schedule for the achievement of compliance by the required date. Such implementation schedules shall in every case provide for the initiation of any needed construction of pretreatment facilities within 18 months of the date of promulgation of applicable pretreatment standards.

(c) Compliance Monitoring

(1) The discharger shall monitor the compliance of all affected sources with the provisions of this condition and shall submit quarterly reports on the status of such compliance to the Board and the Regional Administrator. These quarterly compliance reports shall cover the same periods and shall be submitted on the same schedule as the monitoring reports required by this order beginning by December 18, 1975.

(2) The discharger shall report quarterly to the Board and the Regional Administrator each instance of compliance or noncompliance by an affected source with the provisions of implementation

schedules submitted as required by subparagraph b. of this condition.

(3) The wastewater flow of each affected source that is not covered by a current implementation schedule shall be monitored by the discharger or at the direction of the discharger by the source, or by both, in such a manner and frequency so as to produce information that will demonstrate to the satisfaction of the Board and the Regional Administrator compliance or noncompliance with the pretreatment standards applicable to such source. Such monitoring shall comply with the monitoring requirements of this order. The results of such monitoring shall be reported by the discharger on the Discharge Monitoring Report Form and shall be included in the quarterly compliance report described in 1. above.

(d) Definitions

(1) An "industry" means any facility identified in the Standard Industrial Classification Manual, 1972, Office of Management and Budget, as amended and supplemented, under the following divisions:

a) Division A—Agriculture, Forestry, and Fishing;

b) Division B—Mining;

c) Division D—Manufacturing;

d) Division E—Transportation, Communications, Electric, Gas, and Sanitary Services;

e) Division I—Services.

A facility in the Divisions listed may be excluded if it is determined by the Board and the Regional Administrator that it introduces primarily domestic waste or wastes from sanitary conveniences.

(2) A "major contributing industry" means one that: (1) has a flow of 50,000 gallons or more per average work day; (2) has a flow greater than five percent of the flow carried by the municipal system receiving the waste; (3) has in its waste a toxic pollutant in toxic amounts as defined in standards issued under Section 307 (a) of the Act; or (4) is found by the Board or the Regional Administrator to have significant impact, either singly or in combination with other contributing industries, on the treatment works or the quality of its effluent.

(2) A "treatment works" means any facility, method or system for the storage, treatment, recycling, or reclamation of municipal sewage or industrial wastes of a liquid nature, including waste in combined storm water and sanitary sewer systems.

(4) "Prohibited wastes" means any of the following wastes, which shall not be introduced into the treatment works:

a) Wastes which create a fire or explosion hazard in the treatment works;

b) Wastes which will cause corrosive structural damage to treatment works, but in no case wastes with a pH lower than 5.0 unless the works

is designed to accommodate such wastes;

c) Solid or viscous wastes in amounts which would cause obstruction to the flow in sewers, or other interference with the proper operation of the treatment works; or

d) Wastes at a flow rate and/or pollutant discharge rate which is excessive over relatively short time periods so that there is a treatment process upset and subsequent loss of treatment efficiency.

(5) An "incompatible pollutant" means any pollutant which is not a compatible pollutant.

(6) A "compatible pollutant" means biochemical oxygen demand suspended solids, pH and fecal coliform bacteria, plus additional pollutants identified as compatible in this permit if the treatment works was designed to treat such pollutants, and in fact does remove such pollutants to a substantial degree.

13. *Growth—Related Conditions*

(a) Step 1.—Warning Notice

Should there be a violation of any condition of this order the Board or the Regional Administrator pursuant to Section 402(h) of the Act may proceed in a court of competent jurisdiction to restrict or prohibit further connections to the discharge's treatment works by any sources not utilizing the treatment works prior to the finding that such a condition was violated.

(b) Step 2.—Initial Planning Actions

Not later than December 18, 1975, the discharger shall submit to the Board and the

Regional Administrator a report on progress in the development of a long-range plan which will assure the prevention of hydraulic overload or inadequate treatment capacity of the discharger's treatment works. The report shall be revised and submitted to the Board and the Regional Administrator not less frequently than at twelve month intervals thereafter.

The long-range plan shall include but is not limited to the following considerations:

(1) a land use and pollution strategry to achieve a balance between increased wasteload generation and treatment capacity;

(2) Community review of developments which increase wasteload generation such as subdivision approvals, building permits and zoning changes; and,

(3) development of local legal authority to enact ordinances, amend zoning regulations, modify subdivision requirements and building codes, or other appropriate measures to assure the prevention of hydraulic overload or inadequate treatment capacity.

(c) Step 3.—Comprehensive Planning and Management System

Within 60 days of the effective date of this Order the discharger shall submit to the Board and the Regional Administrator a schedule of anticipated new extensions and connections of new sources of wasteload to the discharger's treatment works for the period ending with the expiration date of this order.

The schedule shall be consistent with applicable land use plans, open space plans, zoning

maps, capital improvement budgets, and other appropriate planning and management constraints. Beginning not later than one year after submittal of the schedule, the discharger shall submit to the Board and the Regional Administrator an annual report which contains revisions of the schedule, if any, and compares the rate of actual extensions and connections with the schedule.

In addition, within 30 days of the effective date of this Order, the discharger shall submit to the Board and the Regional Administrator a proposed program of public notice including quarterly summary reports which inform users of the discharger's treatment works and local government officials of the extent of compliance achieved with the conditions of this order. Thereafter, the discharger shall initiate the program 30 days after approval of the Board and the Regional Administrator including in said implementation any additions or modifications which the Board or the Regional Administrator may make in approving the program.

14. Nothing in this order shall be construed to relieve the discharger from civil or criminal penalties for noncompliance.

15. The Board and the Regional Administrator may upon request of the discharger, and after public notice, revise or modify any schedule of compliance in this order if they determine good and valid cause (such as an act of God, strike, flood, materials shortage, or other event over which the discharger has little or no control) exists for such revision.

REPORTING REQUIREMENTS

1. The discharger shall file with the Board and the Regional Administrator technical reports on self-monitoring work performed according to the detailed specifications contained in any Monitoring and Reporting Programs as directed by the Executive Officer.

2. The discharger shall file a written report with the Board and the Regional Administrator within 90 days after the average dry-weather waste flow for any month equals or exceeds 75 percent of the design capacity of his waste treatment and/or disposal facilities. The discharger's senior administrative officer shall sign a letter which transmits that report and certifies that the policy-making body is adequately informed about it. The report shall include:

   Average daily flow for the month, the date on which the instanteous peak flow occurred, the rate of that peak flow, and the total flow for that day.

   The discharger's best estimate of when the average daily dry-weather flow rate will equal or exceed the design capacity of his facilities.

   The discharger's intended schedule for studies, design, and other steps needed to provide additional capacity for his waste treatment and/or disposal facilities before the waste flow rate equals the capacity of present units. (Reference: Sections 13260, 13267(b), and 13268, California Water Code.)

3. The discharger shall notify the Board and the Regional Administrator of (a) new introduction into such works of pollutants from a source which would be a new source as defined in Section 306 of the Federal Water Pollution Control Act, or amendments thereto, if such source were discharging pollutants to the waters of the United States, (b) new introductions of pollutants into such works from a source which would be subject to Section 301 of the Federal Water Pollution Control Act, or amendments thereto,

if it were discharging such pollutants to the waters of the United States, (c) a substantial change in the volume or character of pollutants being introduced into such works by a source introducing pollutants into such works at the time the waste discharge requirements were adopted. Notice shall include a description of the quantity and quality of pollutants and the impact of such change on the quantity and quality of effluent from such publicly owned treatment works. A substantial change in volume is considered an increase of ten percent in the mean dry-weather flow rate.

4. The discharger shall file with the Board and the Regional Administrator a report on waste discharge at least 120 days before making any material change or proposed change in the character, location or volume of the discharge.

5. The discharge shall file with the Board and the Regional Administrator, within 90 days after the effective date of this Order, a technical report on his preventive (fail-safe) and contingency (cleanup) plans for controlling accidental discharges, and for minimizing the effect of such events. The technical report should:

   Identify the possible sources of accidental loss, untreated waste bypass, and contaminated drainage. Loading and storage areas, power outage, waste treatment unit outage, and failure of process equipment, tanks and pipes should be considered. Evaluate the effectiveness of present facilities and procedures and state when they became operational. Describe facilities and procedures needed for effective preventive and contingency plans.

   Predict the effectiveness of the proposed facilities and procedures and provide an implementation schedule containing interim and final dates when they will be constructed, implemented, or operational. (Reference: Sections 13267(b) and 13268, California Water Code.)

The Board, or the Regional Administrator after review of the technical report, may establish conditions which it deems necessary to control accidental discharges and to minimize the effects of such events. Such conditions may be incorporated as part of this Order, upon notice to the discharger.

6. The discharger shall submit to the Board, and the Regional Administrator by January 30 of each year, an annual summary of the quantities of all chemicals, listed by both trade and chemical names, which are used for cooling and/or boiler water treatment and which are discharged.

7. The discharger shall submit to the Board, and Regional Administrator together with the first monitoring report required by this permit, a list of all chemicals and proprietary additives which could affect this waste discharge, including quantities of each. Any subsequent changes in types and/or quantities shall be reported promptly.

8. Not later than 6 months from the effective date of this order and permit the discharger shall submit to the Board and the Regional Administrator a work plan and schedule of compliance to achieve a demonstration that the discharger complies with Section 403 of the Federal Water Pollution Control Act.

   Upon approval of the Board and the Regional Administrator, the interim and final dates contained in the schedule shall become conditions of this Order. Approval may include additions or modifications to the schedule.

GENERAL MONITORING AND REPORTING PROVISIONS

GENERAL PROVISIONS FOR SAMPLING AND ANALYSIS

Unless otherwiste noted, all sampling, samples preservation, and analyses shall be conducted in accordance with the current edition of "Standard Methods for the Examination of Water and Wastewater" or as approved by the Executive Officer and the Regional Administrator.

All analyses shall be performed in a laboratory approved by the Executive Officer or certified to perform such analyses by the California State Department of Public Health.

Effluent samples shall be taken downstream of any addition to the treatment works and prior to mixing with the receiving waters.

The discharger shall calibrate and perform maintenance procedures on all monitoring instruments and equipment to insure accuracy of measurements, or shall insure that both activities will be conducted.

A grab sample is defined as an individual sample collected in fewer than 15 minutes.

A composite sample is defined as a combination of no fewer than eight individual samples obtained over the specified sampling period. The volume of each individual sample is proportional to the discharge flow rate at the time of sampling. The sampling period shall equal the discharge period, or 24 hours, whichever period is shorter.

GENERAL PROVISIONS FOR REPORTING

For every item where the requirements are not met, the discharger shall submit a statement of the actions undertaken or proposed which will bring the discharge into full compliance with requirements at the earliest time

and submit a time table for correction to the Board and the Regional Administrator.

By February 28 of each year, the discharger shall submit an annual report to the Board and the Regional Administrator. The report shall contain both tabular and graphical summaries of the monitoring data obtained during the previous year. In addition, the discharger shall discuss the compliance record and the corrective actions taken or planned which may be needed to bring the discharge into full compliance with the waste discharge requirements.

The discharger shall maintain all sampling and analytical results, including strip charts; date, exact place, and time of sampling; date analyses were performed; analyst's name; analytical techniques used; and results of all analyses. Such records shall be retained for a minimum of three years. This period of retention shall be extended during the course of any unresolved litigation regarding this discharge or when requested by the Board or the Regional Administrator.

Monitoring reports shall be signed by:

a. In the case of corporations, by a principal executive officer at least of the level of vice-president or his duly authorized representative, if such representative is responsible for the overall operation of the facility from which discharge originates;

b. In the case of a partnership, by a general partner;

c. In the case of a sole proprietorship, by the proprietor;

d. In the case of municipal, state or other public facility, by either a principal executive officer, ranking elected official, or other duly authorized employee.

The discharger shall mail an originally signed copy of each monitoring report and of all other reports required by this order to each of the following:

Regional Administrator
Environmental Protection
Agency
Region IX
Attention: ENCMR
100 California Street
San Francisco, CA 94111

California Regional Water
Quality Control Board,
Los Angeles Region
107 South Broadway
Los Angeles, CA 90012
Attention: Executive Officer

Each report shall contain the following completed declaration:

"I declare under penalty of perjury that the foregoing is true and correct

Executed on the — day of ——— at ————————.

———————————— (Signature)

———————————— (Title)"

In reporting the monitoring data, the discharger shall arrange the data in tabular form so that the date, the constituents, and the concentrations are readily discernible. The date shall be summarized to demonstrate compliance with waste discharge requirements, and, where applicable, shall include results of receiving water observations.

If the discharger monitors the discharge more frequently than required by this order, using approved analytical methods as specified herein, the results of such monitoring shall be included in the calculation and reporting of the values required in the monitoring report. Such increased frequency shall also be indicated in the monitoring report.

Monitoring, analytical, and reporting requirements may be modified by the Board or the Regional Administrator upon due notice.

CALIFORNIA REGIONAL WATER QUALITY
CONTROL BOARD
LOS ANGELES REGION
MONITORING AND REPORTING PROGRAM
NO. 1492
FOR
City of Los Angeles
Hyperion Treatment Plant
(CA0109991)

A. *Location of Sampling Stations*

1. A sampling station shall be established for each point of discharge and shall be located where representative samples of the effluent can be obtained. These stations shall be designated as Discharge Serial Nos. 001, 002, and 003, respectively.

2. Offshore stations shall be established along eight traverses radiating outward from a point of origin which shall be the center of the five-mile effluent outfall diffuser pattern (approximately at Latitude 33° 54′ 30″ N and Longitude 118° 31′ 30″ W).

These traverses shall proceed radially outward from that point of origin on bearings referenced to true north, as follows:

Traverse 1	North
" 2	N 45° E
" 3	East
" 4	S 45° E
" 5	South
" 6	S 45° W
" 7	West
" 8	N 45° W

The offshore stations shall be located along these traverses at the following distances from the origin:

For Traverse 1:

Station 1A	7,500 feet
" 1B	20,000 "

For Traverse 2:

Station 2A	6,000 feet
" 2B	15,000 "

For Traverse 3:

Station 3A	6,500 feet
" 3B	15,000 "

For Traverse 4:

Station 4A	6,000 feet
" 4B	20,000 "
" 4C	35,000 "

For Traverse 5:

Station 5A	7,000 feet
" 5B	20,000 "
" 5C	35,000 "

For Traverse 6:

Station 6A	7,000 feet
" 6B	20,000 "

For Traverse 7:

Station 7A	5,000 feet
" 7B	20,000 "

For Traverse 8:

Station 8A	7,000 feet
" 8B	20,000 "
" 8C	35,000 "

In addition to the above, a control station (Station OC) shall be established at a location 6,000 feet offshore from Las Tunas Beach (34° 1′ 20.3″ N, 118° 36′ W).

The offshore stations shall be located by means of radar navigation; other means may be utilized if in the judgment of the Executive Officer they are of sufficient accuracy to permit reoccupation of the stations within a reasonable distance.

3. Eight nearshore stations shall be established, in order to facilitate commutation by boat, at a distance of 3,000 feet from the shoreline, as follows:

Station	Location
N1	Off Las Tunas Beach (34° 1′ 50.3″N, 118° 36′W)
N2	Along Traverse 1 and 40,000 feet from the origin
N3	Offshore from Ocean Park tower, Santa Monica
N4	Along Traverse 2 and 25,000 feet from the origin
N5	Offshore from Shore Station S 34.8 (see below)
N6	Along Traverse 3 and 28,000 feet from the origin
N7	Off Municipal Pier, Manhattan Beach
N8	Due west from northerly stack, near north end of King Harbor, Redondo Beach

4. Seventeen shore stations shall be established as follows:

Station	Location
S21.7	Extension of Big Rock Road at 19543 Pacific Coast Highway, Malibu
S23.6	1,000′ east of Topanga Canyon Blvd., east side of The Point Restaurant, Malibu
S25.6	East side of Bel Air Bay Club, Pacific Palisades
S27.5	Extension of San Vicente Blvd., Santa Monica-300′ SE of abandoned pilings at Santa Monica Beach State Park
S28.5	400′ SW of Wilshire Blvd., Santa Monica State Beach Park (NW of end of breakwater)
S29.6	Strand Street extended, Santa Monica
S31.3	Venice Blvd. extended, Venice Beach
S32.4	Northstar Street extended, Venice Beach
S33.7	Surf Street, north side of Westport Beach Club, Playa Del Rey
S34.8	Epinard Street extended, Playa Del Rey
S35.8	Opposite Hyperion East Headworks, 1,100′ north of one-mile submarine outfall
S37.4	45th Street extended, Manhattan Beach State Park
S39.3	6th Street extended, Manhattan Beach State Park
S40.6	South side of Municipal Pier, Hermosa Beach
S42.5	Pearl Street extended, south side of Redondo Park, Redondo Beach
S43.7	Avenue I extended, Redondo Beach
S45.0	Extension of Arroyo Circle, Malaga Cove, Palos Verdes Estates

5. Three diving stations shall be established at the main termini of the one-mile and 5-mile effluent outfalls and on the shelf above the submarine canyon in which the sludge outfall terminates; these shall be designated D1, D2 and D3, respectively.

6. Eight inshore diving stations shall be established on transects normal to the shoreline at the eight nearshore stations, at a depth of 80 feet.

B. *Type and Frequency of Sampling and Analysis*

1. Effluent Monitoring

Parameter	Discharge Serial No.	Units	Type of Sample	Minimum Frequency of Analysis
Flow	001,002,003	mgd	continuous	——
Temperature	001,002,003	°F	grab	twice daily
BOD_5 20°C	001,002	mg/l	24-hr. composite	daily
Suspended solids	001,002	mg/l	24-hr. composite	daily
Coliform group	001,002	MPN/10Col	grab	daily
Fecal coliform	001,002	MPN/10Col	grab	daily
pH	001,002,003	pH units	grab	daily
Oil and grease [1]	001,002,003	mg/l	grab	daily
Settleable solids	001,002	ml/l	grab	once every 8 hours
Arsenic	001,002,003	mg/l	24-hr. composite	monthly
Cadmium	001,002,003	mg/l	24-hr. composite	monthly
Chromium	001,002,003	mg/l	24-hr. composite	monthly
Copper	001,002,003	mg/l	24-hr. composite	monthly
Lead	001,002,003	mg/l	24-hr. composite	monthly
Mercury [2]	001,002,003	mg/l	24-hr. composite	monthly
Nickel	001,002,003	mg/l	24-hr. composite	monthly
Silver	001,002,003	mg/l	24-hr. composite	monthly
Zinc	001,002,003	mg/l	24-hr. composite	monthly

Parameter	Discharge Serial No.	Units	Type of Sample	Minimum Frequency of Analysis
Cyanide	001,002,003	mg/1	24-hr. composite	monthly
Solenium	001,002,003	mg/1	24-hr. composite	monthly
Phenolic compounds	001,002,003	mg/1	24-hr. composite	monthly
Total chlorine residual [3]	001,002	mg/1	continuous	———
Total identifiable chlorinated hydrocarbons	001,002,003	mg/1	24-hr. composite	monthly
Toxicity concentration	001,002	Toxicity units	24-hr. composite	monthly
Radioactivity	001,002,003	PCi/ml [4] PCi/kg [5]	24-hr. composite	monthly
Polychlorinated biphenyls	001,002,003	mg/1	24-hr. composite	monthly
Nitrate nitrogen [6]	001,002	mg/1	24-hr. composite	monthly
Nitrate nitrogen	001,002	mg/1	24-hr. composite	monthly
Amonia nitrogen [7]	001,002	mg/1	24-hr. composite	monthly
Organic nitrogen	001,002,003	mg/1	24-hr. composite	monthly
Detergents (as methylene blue-active substances, MBAS)	001,002	mg/1	24-hr. composite	monthly
Total phosphorus (as P)	001,002,003	mg/1	24-hr. composite	monthly
Total solids	003	mg/1	24-hr. composite	daily

Total volatile solids	003	mg/1	24-hr. composite	monthly
Saponifiable grease	003	mg/1	24-hr. composite	monthly
Floating particulates	001,002	mg/1	24-hr. composite	monthly
2. Influent Monitoring		dry weight		
Flow	——	mgd	———	——
BOD_5 20°C	——	mg/1	24-hr. composite	daily
Suspended solids	——		24-hr. composite	daily

[1] By the trichlorotrifluoroethane extraction method.

[2] By flameless atomic absorption.

[3] By the iodometric method, with the end point determined amperometrically or visually; continuous analysis is required only during periods of chlorination. The discharger shall have the necessary equipment installed prior to October 1, 1975.

[4] For sewage.

[5] For sludge.

[6] By the cadmium reduction or brucine sulfate method.

[7] By distillation—nesslerization or titration automated phenolate (EPA Methods), pp. 134, 141.

3. *Receiving Water Monitoring*

a. Offshore sampling stations shall be occupied at least once each week between the hours of 7 a.m. and 6 p.m. Samples shall be taken at a depth of one to three feet. In the event of stormy weather that makes sampling hazardous or impractical, these samples can be omitted provided that such omissions do not occur in consecutive weeks or in more than four weeks in any calendar year. The following determinations shall be made at each station:

(1) Dissolved oxygen

(2) Grease

(3) Temperature

(4) Transparency

(5) Floating particulates (surface sample only—quarterly monitoring only)

b. Once each month, on a day when samples are taken as specified in 3-a above, samples shall also be obtained at each offshore station at depths of 20 feet, 50 feet, and approximately 10 feet below the thermocline (if the latter two stations lie within 10 feet of each other, the 50-foot station may be omitted), and the following determinations made:

(1) Dissolved oxygen

(2) Temperature

(3) Grease (sub-thermocline samples only)

c. Once each month a determination of water turbidity shall be made at each offshore station at the 5′, 10′, 20′, and 50′ depths, and approximately 10 feet below the thermocline.

d. Once every six months bottom samples shall be obtained at each offshore station for determination of content of organic matter, as a

percent of total dry solids. These bottom samples shall be taken by means of a Shipek, Petersen, or "orange-peel" dredge or an equivalent device having an open sampling area of not less than 60 square inches. Five bottom samples shall be obtained at each station and composited for analysis.

e. Once every six months bottom samples shall be obtained at each offshore station for determinations of thickness of the sludge layer, if any. These samples shall be taken by means similar to those specified for core samples in 3-a. above. Sludge thickness shall be determined by direct measurement to the nearest millimeter. To the extent practicable, a photographic record shall be made of each core.

f. Once every six months bottom samples shall be obtained at each of the offshore stations for biological examination and determination of biomass and diversity. One of these samplings shall be made during the summer season. The samples shall be collected with Shipek, Petersen, "orange-peel" or equivalent type dredge having an open sampling area of not less than 60 square inches. Not less than four samples shall be taken at each station and each shall be processed and analyzed separately.

g. For biomass, the volume and wet weight retained on a one millimeter screen per unit volume of sediment shall be determined. The animals representing at least ten percent of the total population shall be enumerated and identified as to genus (and species if possible).

h. An annual diving survey shall be made. This shall consist of:

(1) An inspection and coring at and in the vicinity of each diving station to deter-

mine thickness of sludge layer, presence and thickness of any "cloud" of unsettled solids, and bottom flora and fauna. A photographic record shall be made of the results of this inspection.

(2) An examination of each outfall and diffuser port system for leaks and flow distribution.

i. At intervals of five years or less, beginning in 1971, an inspection shall be made at the terminus of the sludge outfall and in the vicinity, to determine thickness of sludge layer, presence and thickness of any "cloud" of unsettled solids, and bottom flora and fauna. A photographic record shall be made of the results of this inspection. This inspection may be made by diving, by submarine, or by other suitable means.

j. Nearshore sampling stations shall be occupied once each week between the hours of 7 a.m. and 6 p.m. Samples shall be taken at a depth of one to three feet. In the event of stormy weather that makes sampling hazardous or impractical, these samples can be omitted provided that such omissions do not occur in consecutive weeks or in more than four weeks in any calendar year. The following determinations shall be made at each station:

(1) Dissolved oxygen

(2) Coliform

(3) Transparency

(4) Temperature

k. Once every six months (summer and winter) the blue light energy shall be measured at nearshore stations N1 and N2 at a water depth of 50 feet (or 5′ above the bottom if

shallower than 55 feet). This measurement shall be made:

(1) With a photometer fitted with a cosine collecting device and a blue filter having 50 percent transmission values at 450 and 650 millimicrons;

(2) In units of ergs/cm^2/day;

(3) Between 10 a.m. and 2 p.m. when the sun is not obscured by clouds (a slight haze is permissible).

l. Shore stations shall be sampled on a daily frequency, and the samples shall be analyzed for coliform organisms, most probable number (MPN).

m. At the time samples are collected of the waters of Pacific Ocean (shore, nearshore and offshore stations) observations shall be made and recorded of conditions of wind, weather, and tide. Observations shall also be made and recorded of water color, turbidity, odor, and of floating or suspended matter in the water or on the beach, rocks and jetties or beach structures. The character and extent of such matter shall be described.

n. The inshore diving stations shall be occupied at six-month intervals and the following determinations made: Thickness of organic-laden sediment and composition of substrate; general condition of ocean floor; water temperature and clarity; benthos; and fish count.

C. *Techniques of Sampling and Analyzing*

1. All samples shall be taken and all analyses shall be performed in accordance with the latest edition of "Standard Methods for the Examination of Water and Wastewater", published by the American Public Health Association, Inc., except

that for specific analyses newer techniques may be used if in the judgment of the Executive Officer the results obtained are consistent with the objectives of these waste discharge requirements. Tests for most probable number (MPN) of coliform organisms will be the confirmed test using at least three tubes per dilution and sufficient dilutions to permit determination of the upper and lower MPN limits from standard tables.

2. Those personnel involved in sampling and analysis shall be well trained to accomplish those functions. Sampling and analytical apparatus shall be appropriate to the task and in good working order.

3. Transparency measurements shall be made with a Secchi disc. A Secchi disc is a circular plate, having a standard diameter of 30 centimeters, the top side of which is white. The disc is lowered in the water until the disc is just perceptible, and the depth in feet reported.

4. Turbidity shall be determined by means of a turbidity meter, using equipment and procedure similar to that described by L. V. Whitney, "Transmission of Solar Energy and the Scattering Produced by Suspensoids in Lake Waters", Transactions of the Wisconsin Academy of Sciences, Arts, and Letters, Vol. 31 (1938). Results shall be expressed as the percent of light attenuation per meter of sea water, as compared to a standard of distilled water.

5. Procedures for determination of acute toxicity of the waste using bioassay techniques shall be as specified in the latest edition of "Standard Methods for the Examination of Water and Wastewater", by American Public Health Association et al. Particular attention shall be directed to the selection and preparation of test animals so that the response of biota in the marine environment is accurately measured. Test species selec-

tions shall be submitted to the Executive Officer for advance approval. The duration of the tests shall be 96 hours. Modifications of procedures outlined in "Standard Methods" shall be only as approved in advance by the Executive Officer of this Board.

6. Radioactivity determinations of gross bets activity shall be made within 48 hours following preparation of composite samples. The over-all efficiency of the counting system, size of sample and counting time shall be such that radioactivity can be determined to a sensitivity of ten picocuries per liter (pc/l) for sewage and ten picocuries per gram for sludge, with a 95% confidence limit not to exceed 50 percent.

7. Inshore diving station examinations shall be made in accordance with methods described by Turner, Ebert, and Given, California Fish and Game, Vol. 52, No. 1 (1966).

D. *Filing of Reports*

1. One copy of a written report of the results of the monitoring program shall be submitted to the Board and one copy to the Regional Administrator for each month by the first day of the second following month, beginning not later than November 1, 1975.

2. Each written report shall contain the following information:

   a. Dates and times of sampling and observations;

   b. Weather conditions during sampling;

   c. Average and peak daily volume of wastes discharged during the report period;

   d. Tabulated results of specified analyses and physical observations, including the monthly mean and range for each effluent parameter reported;

e. Depth of thermocline;

f. In addition to reporting the most probable number of coliform organisms obtained from samples collected from shore and nearshore stations, the running median of the latest 6-month period shall also be determined and reported. Coliform data obtained during or within 48 hours following a rainstorm shall not be used in determining medians.

g. In reporting the results of analyses for acute toxicity, the following shall be reported for each analysis:

(1) Median tolerance limit (96 hour test);

(2) A concise statement or table of the experimental data on which median tolerance limit data are based; that is, the number and species of test organisms used and the recorded percentages of survival at each tested concentration. This table shall also include such data for the controls used;

(3) The total number of test animals used in each analysis shall be reported along with the number of test animals surviving after 24 hours, 48 hours, and 96 hours;

(4) The species used in each test.

h. In reporting the data on blue light energy (Item B3j) the measurement depths shall be reported.

State of California
Resources Agency
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD,
LOS ANGELES REGION

Order No. 75-165

NPDES No. CA0109991

WASTE DISCHARGE REQUIREMENTS FOR CITY OF LOS ANGELES HYPERION TREATMENT PLANT

The California Regional Water Quality Control Board, Los Angeles Region finds that:

1. City of Los Angeles discharges wastes from the Hyperion Treatment Plant under waste discharge requirements and a National Pollutant Discharge Elimination System (NPDES) Permit contained in Order No. 75-100 jointly adopted by this Board and issued by the Environmental Protection Agency on August 18, 1975.

2. Order No. 75-100 and the NPDES Permit contain a time schedule for prohibition of the sludge discharge. The time schedule is related to the Clean Water Grant concept approval.

3. Concept approval was given on October 1, 1975.

4. The Environmental Protection Agency is administratively modifying the NPDES Permit to substitute definite dates in the time schedule for compliance with the sludge discharge prohibition.

The Board has notified the discharger and interested agencies and persons of its intent to modify waste discharge requirements for this discharge and has provided them with an opportunity to submit their written views and recommendations.

The Board in a public hearing heard and considered all comments pertaining to the discharge and to the tentative requirements.

IT IS HEREBY ORDERED, that Order No. 75-100 adopted by this Board on August 18, 1975, is modified as follows:

A. Page 16 is deleted and replaced by the attached page.

B. All other pages of Order No. 75-100 shall remain unmodified.

I, Raymond M. Hertel, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Control Board, Los Angeles Region, on December 1, 1975.

/s/ Raymond M. Hertel
RAYMOND M. HERTEL
Executive Officer

RMH: dds

Task	Completion Date	Report of Compliance
D-1		
	January 1, 1976	January 15, 1976
	July 1, 1976	July 15, 1976
	January 1, 1977	January 15, 1977
Demonstration of compliance with limitations	July 1, 1977	July 15, 1977
B-1		
Completion of approvable plans and specifications for Phases I, II, and III	April 1, 1976	April 16, 1976
Award contract and begin construction	July 1, 1976	July 16, 1976
Receive delivery of Phase I dewatering equipment	December 31, 1976	January 16, 1977
Complete constrution of Phase I and achieve operational level	April 1, 1977	April 16, 1977
Complete construction of Phase II and achieve operational level	October 1, 1977	October 16, 1977
Complete construction of Phase III and achieve operational level	April 1, 1978	April 16, 1978
C		
Progress Reports on Program for Ultimate Disposal of Sludge	October 31, 1975	November 15, 1975
	July 1, 1976	July 15, 1976
	January 1, 1977	January 15, 1977
	July 1, 1977	July 15, 1977
	January 1, 1978	January 15, 1978

I, Richard A. Harris, am Assistant Executive Officer of the California Regional Water Quality Control Board, Los Angeles Region, certify that this record is a true and complete copy of the original document.

/s/ Richard A. Harris
RICHARD A. HARRIS

Modified 12/1/75

State of California
Resources Agency

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD,
LOS ANGELES REGION

Order No. 76-80

ORDER DIRECTING THE CITY OF LOS ANGELES TO COMPLY WITH REQUIREMENTS PRESCRIBED BY THE CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD, LOS ANGELES REGION IN ORDER NO. 75-100 (NPDES PERMIT NO. CA-0109991) (C1 1492) (CA0109991) (M-1492)

The California Regional Water Quality Control Board, Los Angeles Region, finds:

1. City of Los Angeles discharges an average of 350 mgd (million gallons per day) of treated municipal wastewater and approximately 160 tons per day of sewage sludge to Santa Monica Bay from its Hyperion Treatment Plant in Playa del Rey under requirements prescribed jointly on August 18, 1975, by this Board and the United States Environmental Protection Agency in Order No. 75-100 (NPDES Permit No. CA0109991).

2. On December 1, 1975, this Board adopted Order No. 75-165, amending Order No. 75-100 and the NPDES Permit by modifying the time schedule for prohibition of sludge discharge to the ocean to provide for definite dates for compliance with the Tasks required for compliance with the Discharge Prohibition, as specified in Provisions B-1, and B-3 of Order No. 75-100.

3. The discharge requirements contained in Order No. 75-100 provide, in part, for the following Discharge Prohibition:

"B-1. As ordered by the schedule of compliance in Provision F-1 below, the discharge of sludge through Discharge Serial No. 003 shall be terminated."

"B-3. As used in this order, Phase I shall mean the facilities necessary to provide for the termination of no less than the first ⅓ of the sewage sludge presently discharged. Phase II shall mean the facilities necessary to provide for the termination of no less than an additional ⅓ of the sewage sludge presently discharged. Phase III shall mean the facilities necessary to provide for the termination of the final portion of sewage sludge.

4. The time schedule contained in Order No. 75-165 for accomplishment of the discharge termination for sludge is as follows:

Task	Completion Date	Report of Compliance
Completion of approvable plans and specifications for Phases, I, II, and III	April 1, 1976	April 16, 1976
Award contract and begin construction	July 1, 1976	July 16, 1976
Receive delivery of Phase I dewatering equipment	December 31, 1976	January 16, 1977
Complete construction of Phase I and achieve operational level	April 1, 1977	April 16, 1977
Complete construction of Phase II and achieve operational level	October 1, 1977	October 16, 1977
Complete construction of Phase III and achieve operational level	April 1, 1978	April 16, 1978

5. The City has not completed or reported compliance with the first Task set forth in Finding 4 listed above.

6. Failure to meet the completion date specified for approval plans and specifications makes it highly

probable that the City will fail to meet the subsequent completion dates for the remaining Tasks described above.

The Board in a public hearing heard and considered all testimony pertinent to the matter. All Orders referred to above and records of hearings and testimony therein are included herein by reference.

IT IS HEREBY ORDERED, that City of Los Angeles shall comply with the following:

1. In accordance with Water Code Section 13301, the City of Los Angeles is directed to comply with the provisions of discharge prohibited B-1 of Order No. 75-100 (NPDES Permit No. CA0109991) as amended by Order No. 75-165 in accordance with the following time schedule for elimination of sludge discharge to the ocean:

Phase	Not Later Than	The City Will
I	August 1, 1978	Reduce sludge discharge by 40 tons per day
II	April 1, 1979	Reduce sludge discharge by an additional 40 tons per day for a cumulative reduction of 80 tons per day
III	October 1, 1979	Reduce sludge discharge by an additional 40 tons per day for a cumulative reduction of 120 tons per day
IV	April 1, 1980	Eliminate all remaining discharges of sludge to the ocean. (Approximately 160 tons)

To accomplish compliance with the above schedule the City of Los Angeles shall perform the following tasks in accordance with the dates shown:

Task	Completion Date Not Later Than	Report of Compliance Not Later Than
Advertise for the demolition work, trucks and dewatering equipment for Phases I, II, III & IV	August 1, 1976	August 15, 1976

Task	Completion Date Not Later Than	Report of Compliance Not Later Than
Award contract for demolition, trucks and dewartering equipment for Phases I, II, III & IV	December 1, 1976	December 15, 1976
Submit final plans and specifications for support system	January 1, 1977	January 15, 1977
Award contract for support system	May 1, 1977	May 15, 1977
Complete construction of Phase I and achieve operational level	August 1, 1978	August 15, 1978
Complete construction of Phase II and achieve operational level	April 1, 1979	April 15, 1979
Complete construction of Phase III and achieve operational level	October 1, 1979	October 15, 1979
Complete construction of Phase IV and achieve operational level	April 1, 1980	April 15, 1980

City of Los Angeles shall submit to the Regional Board, the State Water Resources Control Board, and the Regional Administrator of Environmental Protection Agency on or before each compliance report date, a report on compliance or non-compliance with the specific schedule date and task.

If non-compliance is being reported, the reasons for such non-compliance shall be stated, plus an estimate of the date when City of Los Angeles will be in compliance. City of Los Angeles shall notify the Regional Board, the State Water Resources Control Board, and the Regional Administrator of Environmental Protection Agency by letter when it has returned to compliance with the time schedule.

2. If the City of Los Angeles fails to comply with any provision of this Order, the Executive Officer is authorized, and he is hereby directed, to request the

Attorney General and District Attorney to take the appropriate action against the discharger, including injunction and monetary remedies.

I, Raymond M. Hertel, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Control Board, Los Angeles Region, on May 24, 1976.

/s/ Raymond M. Hertel
RAYMOND M. HERTEL
Executive Officer

I, Richard A. Harris, am Assistant Executive Officer of the California Regional Water Quality Control Board, Los Angeles Region, and certify that this record is a true and complete copy of the original document.

/s/ Richard A. Harris
RICHARD A. HARRIS

State of California
Resources Agency

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD,
LOS ANGELES REGION

Order No. 76-202

AN ORDER AMENDING ORDER NO. 76-80 DIRECTING THE CITY OF LOS ANGELES TO COMPLY WITH REQUIREMENTS CONTAINED IN ORDER NO. 75-100 (CI 1492) (CA0109991) (M-1492)

The California Regional Water Quality Control Board, Los Angeles Region, finds:

1. City of Los Angeles discharges an average of 340 mgd (million gallons per day) of treated municipal wastewater and approximately 160 tons per day of sewage sludge to Santa Monica Bay from its Hyperion Treatment Plant in Playa del Ray under requirements prescribed jointly on August 18, 1975, by this Board and the United States Environmental Protection Agency in Order No. 75-100 (NPDES Permit No. CA0109991).

2. On December 1, 1975, this Board adopted Order No. 75-165, amending Order No. 75-100 and the NPDES Permit by modifying the time schedule for prohibition of sludge discharge to the ocean to provide for definite dates for compliance with the tasks required to comply with the Discharge Prohibition, as specified in Provisions B-1, and B-3 of Order No. 75-100.

3. The City failed to meet the completion dates as specified in Order No. 75-165 and at a hearing held May 24, 1976, this Board adopted Order No. 76-80 directing the City of Los Angeles to comply with requirements, as prescribed by this Board, to eliminate sludge discharge to the ocean.

Order No. 76-80 included the following time schedule to insure the elimination of the sludge discharge to the ocean by April 1, 1980:

Task	Completion Date Not Later Than	Report of Compliance Not Later Than
Advertise for the demolition work, trucks, and dewatering equipment for Phases I, II, III & IV	August 1, 1976	August 15, 1976
Award contract for demolition, trucks and dewatering equipment for Phases I, II, III & IV	December 1, 1976	December 15, 1976
Submit final plans and specifications for support system	January 1, 1977	January 15, 1977
Award contract for support system	May 1, 1977	May 15, 1977
Complete construction of Phase I and achieve operational level	August 1, 1978	August 15, 1978
Complete construction of Phase II and achieve operational level	April 1, 1979	April 15, 1979
Complete construction of Phase III and achieve operational level	October 1, 1979	October 15, 1979
Complete construction of Phase IV and achieve operational level	April 1, 1980	April 15, 1980

4. City of Los Angeles notified this Board by letter dated September 29, 1976, that they would be unable to complete submittal of final plans and specifications for the support system by the due date, January 1, 1977. The City stated that the support system is being designed in two phases and requested that the current time schedule be revised to allow the submittal of the final plans and specifications in two stages. The City has assured the Board that all final construction and operation due dates in Order No. 76-80 will be met on time without change.

IT IS HEREBY ORDERED, that Order No. 76-80 adopted by this Board on May 24, 1976, is amended as follows:

1. The time schedule for compliance contained in Item 1 is deleted, and replaced with the following:

Task	Completion Date Not Later Than	Report of Compliance Not Later Than
Award contract for demolition, trucks and dewatering equipment for Phases I, II, III & IV	December 1, 1976	December 15, 1976
Submit plans and specifications necessary to meet Phase I	January 1, 1977	January 15, 1977
Award contract for Phase I support system	May 1, 1977	May 15, 1977
Submit final plans and specifications for Phases II, III & IV	November 1, 1977	November 15, 1977
Award contract for Phases II, III, & IV support system	April 1, 1978	April 15, 1978
Complete construction of Phase I and achieve operational level	August 1, 1978	August 15, 1978
Complete construction of Phase II and achieve operational level	April 1, 1979	April 15, 1979
Complete construction of Phase III and achieve operational level	October 1, 1979	October 15, 1979
Complete construction of Phase IV and achieve operational level	April 1, 1980	April 15, 1980

City of Los Angeles shall submit to the Regional Board, the State Water Resources Control Board, and the Regional Administrator of Environmental Protection Agency on or before each compliance report date, a report on compliance or non-compliance with the specific schedule date and task.

If non-compliance is being reported, the reasons for such non-compliance shall be stated, plus an estimate of the date when City of Los Angeles will be in compliance. City of Los Angeles shall notify the Regional Board, the State Water Resources Control Board, and the Regional Administrator of Environmental Protection Agency by letter when it has returned to compliance with the time schedule."

2. All other parts of Order No. 76-80 shall remain in full force and effect.

I, Raymond M. Hertel, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Control Board, Los Angeles Region, on November 22, 1976.

/s/ Raymond M. Hertel
RAYMOND M. HERTEL
Executive Officer

RMH: dds

I, Richard A. Harris, am Assistant Executive Officer of the California Regional Water Quality Control Board, Los Angeles Region, and certify that this record is a true and complete copy of the original document.

RICHARD A. HARRIS
/s/ Richard A. Harris

OFFICE OF
CITY ATTORNEY
CITY HALL EAST
Los Angeles, California 90012

[SEAL]

BURT PINES
CITY ATTORNEY

December 9, 1976

Mr. Paul DeFalco
Regional Director
United States Environmental
Protection Agency
Region IX
100 California Street
San Francisco, California 94111

Re: OBJECTIONS TO THE ENVIRONMENTAL PROTECTION AGENCY'S NEGATIVE DECLARATION ON THE PROPOSED ACTION BY THE ENVIRONMENTAL PROTECTION AGENCY OF MAKING A GRANT OFFER TO THE CITY OF LOS ANGELES FOR THE PROJECT TITLED HYPERION TREATMENT PLANT, INTERIM SLUDGE PROCESSING AND DISPOSAL SYSTEM

Dear Mr. DeFalco:

The purpose of this communication is to lodge with you a formal protest, on behalf of the City of Los Angeles, as to your decision to proceed with the funding of the Hyperion Treatment Plant Interim Sludge Project without the preparation and serious consideration of a full environmental impact statement (EIS) pursuant to the provisions of the National Environmental Policy Act. The City of Los Angeles strongly believes that there are serious environmental considerations involved with the proposed project that under federal law are required to be seriously analyzed and considered in an appropriate EIS before the proposed project may properly proceed. In that regard, the view of the governing body of the

City of Los Angeles, its City Council, is set forth in a motion unanimously adopted by the City Council on Tuesday, December 7th, a copy of which we have enclosed.

The City of Los Angeles has received EPA's negative declaration and environmental impact appraisal for the above project. The City strongly questions the validity of the utilization of a negative declaration in support of the agency action.

EPA's environmental impact appraisal stated that the project consists of dewatering the disgested sludge by centrifugation at the Hyperion Treatment Plant (HTP) and hauling the sludge cake by truck to the Palos Verdes Class 1 saniltary landfill. The project capacity will be 160 dry tons/day and will be constructed in four phases, with construction of 40 dry tons/day capacity in each phase. The project will provide for the complete removal of sludge from the ocean by April 1, 1980. EPA's environmental impact appraisal goes on to state that when the entire project is operational, the trucking operation will require 255 round trips/week with a hauling distance of 42 miles/round trip. Operation of the centrifuges will require about 640 lbs. per day of chemical polymers and will consume about 13.1 million kwh/year of electricity. An estimate of energy consumption for the transport of the sludge cake to the Palos Verdes landfill is 3,600 barrels of oil per year. EPA's environmental impact appraisal further states that there will be dust and noise due to the construction work at HPT, impacts on the sanitary landfill site itself and impacts from the transport of the sludge to the site.

The environmental impact appraisal of EPA states, on page 9:

> "Following are the unavoidable adverse impacts from the project:
>
> (a) The energy and materials required for the construction of the dewatering facilities and the energy required for hauling of the sludge cake to the landfill *are less than any alternative which accomplishes the objective of removing City of Los Angeles sludge from the Pacific Ocean.* Sludge disposal of the landfill will have *less impact on the total environment* than any of the other alternatives when energy, time, and biotic effects are considered; (b) Dust generation during the construction of the facilities, and noise impacts from the dewatering and trucking operations are minimal; (c) the air quality impacts of the trucking are less than the impacts for any alternative except the "no project" which does not comply with State and Federal laws." (Emphasis added)

EPA, in its environmental impact appraisal, attempts to justify the utilization of a negative declaration on the ground that the project would have less environmental impact than any other alternative which EPA considered. In the City's view, this does not justify a negative declaration.

The administrative action of the EPA, which the negative declaration purportedly supports, is the award of a grant pursuant to the Federal Water Pollution Control Act. Such action of the EPA is subject to environmental review pursuant to the National Environmental Policy Act, 40 Code of Federal Regulatons, 35.925-8. EPA was required to make an environmental review, pursuant to 40 CFR 6.204, to determine whether *significant impacts* are anticipated from the proposed action, whether any feasible alternatives can be adopted or changes can be made in project design to eliminate significant adverse impacts, and whether an EIS or a negative declaration is required. Section 6.212(a) of these regulations states that when the environmental review indicates there will be *no significant impact or significant adverse impacts have been eliminated by making changes in the project,* the responsible official shall prepare a negative declaration to allow public review of his decision before it becomes final. However, clearly the law does not provide that a negative declaration can be prepared merely because it is believed the project will have less of an environmental impact than the other alternatives.

The principal concern of the City of Los Angeles is the total failure of EPA to consider the consequences of continuing the discharge of sludge into the ocean, the

alternative described as "No project". EPA has summarily dismissed this alternative in its environmental impact appraisal as not complying with State and Federal laws. We are unaware of any State or Federal law that mandates the Interim Sludge Processing and Disposal System that is the subject of the instant grant offer, nor are we aware of any requirements of law that require the City to diccontinue discharge of sludge to the ocean at this time. Even if we accept the proposition that EPA need not consider an alternative that conflicts with the mandate of a federal statute, it is our judgment that at most the discontinuance of ocean dumping of sludge may not be required by the Federal Water Pollution Control Act until 1985. Any decision to require such discontinuance prior to that date is purely within the discretion of EPA. Clearly, pursuant to 40 CFR 6.304(b), EPA is required to prepare an EIS, which ". . . shall develop, describe, and objectively, weigh feasible alternatives to any proposed action, *including the options of taking no action or postponing action.*" (Emphasis added.)

The City, in its environmental assessments did not consider the continuation of sludge discharge into the ocean as an alternative since the City was subject to an order of a State Regional Water Quality Control Board ordering the eventual cessation of ocean discharge of sludge. Pursuant to The California Environmental Quality Act (Public Resources Code, Section 21154), the City was precluded from considering ocean discharge as an alternative since it would conflict with the State Agency's order. EPA, however, is not subject to the restraints of Section 21154.

Additionally EPA could not justify refusal to consider continuance of ocean discharge of sludge as an alternative merely because the law may preclude such discharge in the future or even at present. The United States Court of Appeals, District of Columbia circuit, in the case of *Natural Resource Defense Council, Inc.* v. *Morton*, 458 F.2d 827 (1972) stated that:

> "The need for continuing review of environmental impact of alternatives under NEPA cannot be put to one side on the ground of past determinations by Congress or the President." (p. 836.)

The court went on to say that:

> "The mere fact that an alternative requires legislative implementation does not automatically establish it as beyond the domain of what is required for discussion, particularly since NEPA was intended to provide a basis for consideration and choice by the decision makers in the legislative as well as the executive branch." (p. 837.)

The *Morton* case has been cited, as to this point, with approval in subsequent decisions. *Environmental Defense F., Inc.* v. *Corps of Engineers of United States Army*, 492 F.2d 1123, 1135 (1974); *Sierra Club* v. *Linn*, 502 F.2d 43, 62 (1974).

The failure of EPA to consider the alternative of continued ocean discharge is sufficient by itself to require further environmental assessment. The City of Los Angeles has other concerns, however, with the adequacy of the supporting data for EPA's Negative Declaration. For example, EPA's environmental impact appraisal is totally conclusionary in content. It states, on page 6, that the dust and noise due to construction activities will have minimal impacts on the surrounding area. There is no supportive data in the appraisal for this conclusion. It further states that the use of the Palos Verdes landfill for final disposal of sludge will result in the least environmental impacts from the hauling of sludge, (p. 7) and the impact on air quality is insignificant when compared to all other viable alternatives. (p. 8). Again there is no supporting data in the appraisal for these statements.

The appraisal declares that the "(n)oise impacts produced by this transport *should* be minimal because the trucks will be operated during normal working hours over standard truck routes." (p. 7, emphasis added.) This statement, by its very language, implies that the

noise impacts may not be minimal and thus there may be a significant environmental impact just from noise.

There are to be 255 round trips/week or 51 round trips on an average each day, which means 102 goings and comings from the landfill per day. Assuming the trucks operate on an eight hour day, and allowing for an hour going and coming, this could mean there would be six hours of activity in the area of the landfill, or approximately 17 trips per hour or approximately one every 3½ minutes. To what extent is there presently truck activity on these routes? How significant is the increase in truck activity, and in the use of the landfill? What impact will this trucking and project use of the landfill have on this area? The environmental impact appraisal does not even address these questions.

In making the determination as to whether a project will not have significant adverse environmental consequences, the inherent danger, as stated by the United States Court of Appeals (9th Cir.) in *City of Davis* v. *Coleman*, 521 F.2d 661, 673, is that the most serious environmental effects of a project may not be obvious, and that the purpose of the EIS requirements is to ensure that to the "fullest extent possible, agency decision-makers have before them and take into proper account a complete analysis of the project's environmental impact."

EPA's negative declaration asserts that it reviewed the City's environmental impact assessment. The City, in its assessment, namely, the final environmental impact report it prepared for the project, dated August 1, 1975, stated, on page 44, that the disposal of sludge at a landfill may produce severe unavoidable adverse environmental impacts. The City's EIR also states that the generation of noise and traffic, and the consumption of energy by the operation of the sludge dewatering facilities, trucks and landfill vehicles are adverse effects which cannot be avoided if the project is to be implemented. In short, both the City's EIR and EPA's Environmental Impact Appraisal indicate that the project may cause a significant affect on the environment.

The court, in *City of Davis* v. *Coleman, supra,* at p. 673 stated that an "EIS (Environmental Impact Statement) must be prepared whenever a project 'may cause a significant degradation of some human environmental factor.'" The court went on to quote with approval the language of the case of *Minnesota Public Interest Research Group* v. *Butts*, 498 F.2d 1320, wherein that court said:

> "An initial decision not to prepare an EIS precludes the full consideration directed by Congress. In view of the concern for environmental disclosure present in NEPA, the agency's discretion as to whether an impact statement is required is properly exercised only within narrow bounds. Action which *could* have a significant effect on the environment should be covered by an impact statement." (Emphasis added.)

The United States District Court in the case of *Pacific Legal Foundation* v. *Burns* (Central District, California), enjoined the operation of the Diamond Lane on the Santa Monica Freeway, stating therein that "in determining whether a project 'may have a significant effect on the environment,' the courts properly interpret that phrase to impose a low threshold requirement."

In the case of *Concerned Residents of Buck Hill Falls* v. *Grant*, 388 F. Supp. 394, 409, the United States Court of Appeals stated that:

> "The duty imposed on all federal agencies by N.E.P.A. to prepare an environmental impact statement in appropriate cases is to be construed generously and enforced strictly; Congress intended by enacting NEPA to require all federal agencies to give fuller study and consideration to environmental effects to their projects, a goal which can be realized only by requiring strict compliance with the procedure set forth in Section 102(2)(C) of the Act."

The United States Court of Appeals in *Calvert Cliffs Coordinating Committee* v. *United States Atomic Energy Commission*, 449 F.2d 1109, 1112 (1971) (D.C. Cir.)

stated that NEPA contains very important "procedural" provisions—"provisions which are designed to see that all federal agencies do in fact exercise the substantial discretion given them. These provisions are not highly flexible. Indeed, they establish a strict standard of compliance."

The Palos Verdes landfill adjoins a residential area. We are advised that representatives of the affected communities have already contacted you to underscore their serious concerns regarding the potential impacts on their communities. By utilizing the EIS procedure, EPA would be required to publish a notice in local newspapers stating that the draft EIS is available for comment and listing where copies could be obtained, and submitting news releases to other media. 40 CFR 6.208(b)(3). A public hearing would also be available. While EPA is not required by statute to hold public hearings on EIS's the responsible official should hold a public hearing on a draft EIS whenever a hearing may facilitate the resolution of conflicts or significant public controversy. 4 CFR 6.402. Certainly, however, only by complying with the EIS procedures can all the affected parties present their concerns and have them properly evaluated and considered.

The City of Los Angeles has not decided that the Palos Verdes landfill is the appropriate landfill for disposal of HTP sludge. Even if it is eventually determined to be the most appropriate site, what happens when it is filled? We see no evidence in EPA's data that indicates EPA is aware of the remaining capacity of the site and the projected demand for other refuse disposal at the site. If the Class I landfill capacity of Southern California is used up for sludge disposal, what alternative disposal methods are available for those wastes, many hazardous, that can only be placed in Class I landfills? In light of these factors, we must question the validity of EPA's statement in the Environmental Impact Assessment that "No secondary impacts on the environment are anticipated from the implementation of the project."

This City continues to be very concerned about the tentative decision to use the Palos Verdes landfill for

disposal of the sludge. It will be difficult to cope with the almost certain public controversy that will ensue when the communities surrounding the Palos Verdes landfill, or communities around other potential landfill sites, become aware of the intention to dispose of the sludge at those sites if a thorough environmental assessment of alternatives has not been done. As noted above, the preparation and public review of an EIS will allow public participation and comment on all of the alternatives involved before a decision has been finally made.

Finally, the Environmental Impact Assessment identifies a number of alternative methods of disposing of the sludge when ocean discharge is discontinued and dismisses them summarily on the basis of higher costs, other environmental considerations, conflict with existing EPA requirements due to delays in implementing the alternative, or uncertainty as to technological capability. We are not aware of any in-depth study of these alternatives to determine whether the conclusions supporting their rejection are valid, and if so, whether on balance the disadvantages of disposal in the Palos Verdes landfill might not outweigh the disadvantages of other alternatives, even if they are more costly or pose other problems.

It is requested, therefore, that EPA prepare a full and legally adequate environmental impact statement developing, describing, and objectively weighing feasible alternatives to the project, as required by the National Environmental Policy Act and applicable regulations thereunder, including the options of taking no action or postponing action. The feasible alternatives should include the alternative of the continuation of sludge discharge into the ocean.

EPA's environmental impact appraisal, both by its inclusions and ommissions, indicates that an EIS is necessary prior to EPA's making a grant offer in this matter. It is our judgment that without an EIS the grant offer would be in violation of NEPA, a situation that the City of Los Angeles cannot countenance. We feel confident that EPA, as the principal federal agency responsible for protecting the nation's environment, also

desires to avoid a clear violation of the applicable federal law.

We trust you will advise us of the actions you intend to take in response to this formal protest as expeditiously as possible.

Very truly yours,

BURT PINES
City Attorney

By/s/ L. L. Hoffman
LAWRENCE L. HOFFMAN
Chief Assistant City Attorney
On behalf of the City of
Los Angeles

LLH:jm

cc: Hon. Tom Bradley, Mayor
Each Member of the City Council
Hon. Board of Public Works
Dr. C. Erwin Piper, City Administrative Officer
Donald C. Tillman, City Engineer
State Water Resources Control Board
State Regional Water Quality Control Board
Ken Spiker, Chief Legislative Analyst

[EMBLEM]

LOS ANGELES AREA
CHAMBER OF COMMERCE
404 South Bixel Street, P.O. Box 3696
Los Angeles, California 90051

(213) 482-4010

December 15, 1976

Mr. Paul De Falco, Jr.
Regional Administrator
U. S. Environmental Protection Agency
Region IX
100 California Street
San Francisco, California 94111

Hyperion Treatment Plant,
Interim Sludge Processing
and Disposal System

Dear Mr. De Falco:

This is in reply to your letter of November 18, 1976, to All Interested Government Agencies and Public Groups in connection with the proposed modifications to the Hyperion Treatment Plant and Interim Sludge Processing and Disposal System.

Chamber of Commerce Position

Briefly, it is the position of the Los Angeles Area Chamber of Commerce that an environmental impact report must be prepared, circulated, considered and approved by the City of Los Angeles, the State Water Resources Control Board and the U. S. Environmental Protection Agency in connection with the proposed plans to stop the discharge of sludge from the City of Los Angeles Hyperion Treatment Plant and to provide for the disposal of this sludge by transportation and disposal in an appropriate sanitary landfill, or by incineration, or some other means of disposal.

It is the position of the Los Angeles Area Chamber of Commerce, based upon a detailed analysis of the pro-

posal that there will be a significant and major impact on the environment if the proposed Interim Sludge Processing and Disposal System contemplated by the Agency is carried out. In addition, there will be a substantial financial impact on the citizens and taxpayers of Los Angeles. Since there is no demonstrable adverse environmental impact from the present system of sludge disposal into the deep submarine ocean waters off of southern California, there are no demonstrable benefits to be derived from putting the proposed plan into effect.

Finally, the Los Angeles Area Chamber of Commerce believes that the Agency's letter of November 18, 1976 has not been sent to a sufficient number of public agencies and other interested parties in southern California to constitute adequate notice of the Agency's proposed plans. The Agency's proposal with its significant environmental and financial impact has not been published in the Federal Register as required under the Federal Register Act. Finally, no provision has been made for necessary public hearings at which the environmental effect of the Agency's proposed Interim Sludge Processing and Disposal System can be evaluated.

In essence, since the proposed plan involves action by the City of Los Angeles, the California State Water Resources Control Board, and the U. S. Environmental Protection Agency, the statutory and procedural requirements imposed by the California Environmental Quality Act and the National Environmental Protection Act must be complied with.

Background of Proposed Project

At the present time the City of Los Angeles' major Hyperion Treatment Plant discharges 360 million gallons per day of waste water effluent and the resulting digested primary and secondary sludge into a deep submarine canyon in the Pacific Ocean through an outfall terminating 7 miles offshore at a depth of 330 feet. The effluent is 0.75% (3/4 of 1%) suspended solids, made up of:

1.3 mgd of screened digested sludge (primary)
1.0 mgd of waste activated sludge (secondary)
2.5 mgd of secondary effluent
—
4.8 mgd average daily discharge

This method of disposal of the sludge has been in effect and in operation for a period of nearly 20 years. Under the Agency's proposed plan to alter this method of sludge disposal, instead, special dewatering facilities are to be installed at the Hyperion Treatment Plant. The resulting estimated 800 wet tons per day of sludge are then to be trucked across the City and disposed of by dumping into an acceptable sanitary landfill. While such sludge dumping, constituting a Class 1 landfill operation is now permitted at the nearby Palos Verdes landfill site, starting in about 1980, it will be necessary to truck the resulting sludge a distance of up to 40 miles for dumping in the City's Lopez Canyon sanitary landfill site in the Sunland-Tujunga area or up to 40 miles for disposal in the Los Angeles County Calabasas sanitary landfill.

> The present volume of sludge in the underwater offshore submarine canyon has occupied an area of about 2 kilometers with a depth of up to 1 meter. An even greater allowance for disposition of such volumes of sludge will be required in Lopez Canyon or any alternate site utilized under the Agency's plan.

Based upon an 80-mile round trip for each truck load and 50 truck loads per day it is estimated that 350,000 additional gallons of gasoline will be consumed on an annual basis adding to the air pollution and congestion in the Los Angeles Air Basin. In this regard, both the California Air Resources Board, and the U. S. Environmental Protection Agency itself, have already expressed their concern over the emission of any additional air pollutants into the Los Angeles Air Basin, stating that such additional emissions can only be authorized in the event that there be a shut-down of an equivalent amount of other air emissions on a "trade-off" basis. No such

"trade-off" is contemplated under the Agency's proposed plan.

Lack of Environmental Benefit

In order to assess the environmental impact of the present Los Angeles City and County sanitation waste discharge practices, since 1969, both the City and County have participated in a joint Southern California Coastal Water Research Project employing about 30 qualified scientists, at a cost of about $800,000 a year. $500,000 of this cost is underwritten by the Cities of Los Angeles and San Diego, Ventura County, and the County Sanitation Districts of Los Angeles and Orange Counties. An additional $230,000 is underwritten by the U. S. Environmental Protection Agency, and the remainder of the funding is from miscallaneous sources, including the University of California. Over the more than five years of the Project's existence more than $5 million has been expended studying the biology, chemistry and engineering problems covering the Southern California Bight ocean area from Ventura County to the Mexican Border, the ocean area into which the City's Hyperion Plan effluent and sludge is discharged.

The Project's research work, carried on over a period of time, has analyzed in detail the effect on marine life, including fish, marine life, invertebrates, and bacteria in the entire scuthern California offshore area. The Project's conclusion, as set forth in the Project's 755-page 1973 Three Year Report is:

> "Because of the generally minor and reversible nature of the effects and uncertainty as to the actual consequences of the most well-intentioned corrective actions, there is presently no justification for any major alteration of waste management or discharge practice . . ."

The present Director of the Project has concluded that there appears to be "no possibility" of harming a "significant percentage of the population of any species" of marine animals. Even if the present waste discharge

practices are continued for several years at about the present rate and toxicity it is his opinion, backed by the scientists working on the project, that there will not be "any serious or irreversible effect on the sealife."

Compared to the continuation of the present practice of discharging sewage effluent and sludge into the deep ocean waters of California the Agency's proposed Interim Sludge Processing and Disposal System would have significant adverse environmental impacts not only with respect to the transportation of the sludge, but with respect to the environmental impact of the disposition of the resulting sludge in the Lopez Canyon and Calabasas sanitary landfills. In this connection the environmental impact on adjacent landfill homeowners, the effect on the flora and fauna and the ecology of the sanitary landfill area concerned must be assessed, as well as the effect on ground water supplies underlying the areas in which the disposition is planned to take place. In this regard, the need for environmental impact analysis for exactly such proposed landfill operations has been precisely recognized in the preparation and presentation of a four-volume Environmental Impact Statement covering the City of Los Angeles' proposed reactivation of the Mission Canyon Landfill area for exactly the type of sanitary landfill operations proposed in the present plan.

Adverse Financial Impact

In addition to the substantial adverse environmental impact (which does not exist under the present deep ocean submarine sludge disposal system) there is a clear adverse financial impact. According to the Agency's letter not only will new project facilities totalling $7.2 million be required, but in addition to this, substantial increased Operation and Maintenance Expenses will also be incurred.

In contrast to the Agency's statement, it is the City of Los Angeles' estimate that the cost to implement the interim sludge processing project is estimated at $10.9 million of which the City anticipates grant reimburse-

ment of approximately $8.5 million. However, the estimated Operation and Maintenance cost is $3.7 million annually and is not grant eligible. Since it may take five years to implement a permanent process which may be recommended in a present on-going regional study, if the interim process is operational through this five year period, the total cost of the interim project will be $31.3 million. Inasmuch as the wastewater study will be completed in a reasonably short time and may show that no project is necessary, there is serious doubt whether the Agency's interim proposal is cost effective.

Under the criteria established in the 1972 Water Pollution Control Act, these additional costs must be met by increases in sewage process or user charges imposed on water consumed by the City's Residential, Commercial, and Industrial water users or by increases in property taxes imposed upon Los Angeles taxpayers.

Under the alternatives required to be reviewed and under the environmental review required, the lack of present environmental impact and increased adverse impact of the proposed Agency plan and its financial impact must be considered.

Lack of Notice and Hearings

In its letter of November 18, 1976, the Agency's administrator sets forth the Agency's plan in a 2-page letter concluding with the Agency's "preliminary decision" not to prepare an environmental impact statement, going on to state that no action would be taken within 15 working days from the November 18th date of the Notice—presumably providing a basis for Agency action after December 10th.

In this regard it is the Chamber of Commerce's position that there has been a lack of effective notice of the Agency's plans. Not only was the Agency's November 18th letter circulated only to a small restricted service list, but no notice of the Agency's action was published in the Federal Register as required under the Federal Register Act. Since the Agency's present action would

circumvent the environmental review principles set forth in the National Environmental Policy Act by refusing to prepare and circulate an appropriate Environmental Impact Report, additional formal notices must be given of the Agency's plans in this regard.

The need for this additional notice and the required holding of hearings are evident by the Agency's actions in similar circumstances regarding the City of Philadelphia's proposal to continue its 2-year practice of sludge disposal into shallow Delaware Bay waters adjacent to the City of Philadelphia. In that case involving the Interim Ocean Disposal permission granted to the City of Philadelphia (Permit No. PA-010) several days of hearings were held. At the end of this hearing period, at which representatives of the City of Philadelphia appeared and testified a detailed 65-page Report was prepared by the Chairman of the panel convened and designated by the Environmental Protection Agency (G. William Frick, Panel Chairman) September 19, 1975. Thereafter, on September 25, 1975, the Agency administrator issued an 8-page decision reviewing the circumstances (Russell E. Train, Administrator).

While it is the Chamber of Commerce's position and understanding that the circumstances surrounding the disposition of sludge in the shallow waters of the Delaware Bay are different than the circumstances surrounding the disposal of sludge over a 20-year period from the City of Los Angeles' Hyperion Treatment Plant into the deep submarine ocean waters off of southern California, it is nevertheless clear that based on this direct precedent, the sufficient environmental issues were raised in that case, and are raised in this case to require the preparation of an environmental impact report—plus a detailed further Agency environmental review followed by hearing process for disposition of the issue raised by the Agency's proposed plan.

Under these circumstances, it is the Chamber of Commerce's position that in view of the lack of environmental benefit from the proposed plan, and the adverse environ-

mental impact that is predicted to result and the financial impact on the City of Los Angeles water users, a similar environmental review process must be followed by the Agency in the present instance.

Summary

In sum, it is the position of the Los Angeles Area Chamber of Commerce that an environmental impact report must be prepared, circulated, considered and approved by the City of Los Angeles, the State Water Resources Control Board and the U.S. Environmental Protection Agency in connection with the proposed plans to stop the discharge of sludge from the City of Los Angeles Hyperion Treatment Plant and to provide for the disposal of this sludge by transportation and disposal in an appropriate sanitary landfill, or by incineration, or some other means of disposal.

It is the position of the Los Angeles Area Chamber of Commerce, based upon a detailed analysis of the proposal that there will be a significant and major impact on the environment if the proposed Interim Sludge Processing and Disposal System contemplated by the Agency is carried out. In addition, there will be a substantial financial impact on the citizens and taxpayers of Los Angeles. Since there is no demonstrable adverse environmental impact from the present system of sludge disposal into the deep submarine ocean waters off of southern California, there are no demonstrable benefits to be derived from putting the proposed plan into effect.

A copy of the Resolution of the City Council concerning this issue approved on October 22, 1975 is attached for your information.

Copies of this letter are being sent to the California State Water Resources Control Board, and a number of City of Los Angeles officials including the Mayor, the City Council, its Public Works Committee, the City's Department of Public Works and its Bureau of Sanitation. In addition, copies are being forwarded to interested sanitation officials and other interested parties in

southern California, as well as to other southern California members of the Legislature and Congress.

Yours very truly,

/s/ Albert C. Martin
ALBERT C. MARTIN
President

RESOLUTION

WHEREAS the Federal Water Pollution Control Act amendments of 1972 (PL 92-500), require the discontinuance of the discharge of pollutants, including sludge, into the waters of the United States; and

WHEREAS the Water Quality Control Plan for Ocean Waters of California, prepared pursuant to the Porter-Cologne Water Quality Control Act, requires the discontinuance of ocean disposal of sewage sludge; and

WHEREAS at the request of the Federal Environmental Protection Agency (EPA) and the State Water Resources Control Board (SWRCB) the City has entered into a joint regional Wastewater Solids Management Program study with the sanitation districts of Los Angeles and Orange Counties and the EPA and SWRCB to develop a long term regional solution for sludge disposal, which study is estimated to be complete in the fall of 1978; and

WHEREAS the City is participating in the Southern California Coastal Water Research Project which is studying the effects of wastewater discharges, including sludge, into Santa Monica Bay; and

WHEREAS the City is currently disposing of sludge into the ocean under the authority of a National Pollution Discharge Effluent System (NPDES) permit issued jointly by the EPA and the California Regional Water Quality Control Board, which permit requires the City to partially discontinue ocean disposal of sludge by April 1977; and

WHEREAS it is within the legal authority of the EPA and the California Regional Water Quality Control Board to review the NPDES permit and extend the sludge out deadline until such time as the regional Waste Water Solids Management Program study is complete; and

WHEREAS the Executive Officer of the State Water Resources Control Board in a letter to the City Engineer

on October 31, 1974, stated that should the engineering and environmental feasibility of implementing an interim sludge out project "show that these solutions are not cost effective or environmentally acceptable, we will then give further consideration to your request to an extension of the deadline."; and

WHEREAS there is no consensus of scientific opinion that the City's current practice of ocean disposal of sewage sludge has more significant adverse environmental effects than land disposal; and

WHEREAS the environmental impact report for the interim sludge out alternatives which shows that the interim sludge out proposal is not cost effective inasmuch as the proposed hauling of sewage sludge by trucks to a landfill site, at an implementation cost of $10,940,000 and an annual operation expense of $3,700,000, may become obsolete upon completion of the regional Wastewater Solids Management Program study in the fall of 1978; and

WHEREAS the said environmental impact report shows that land disposal of sludge has adverse environmental effects; and

WHEREAS the City does not presently have adequate funds available for the interim sludge project and also the mandatory upgrading of the City's wastewater treatment facilities; now

THEREFORE BE IT RESOLVED that the City of Los Angeles hereby requests the Regional Administrator of the Federal Environmental Protection Agency and the State Regional Water Quality Control Board to review the current NPDES permit and postpone the deadline for the discontinuance of ocean disposal of sewage sludge until a reasonable time after the regional Wastewater Solids Management Program study is completed.

PACIFIC LEGAL FOUNDATION
455 Capitol Mall, Suite 465
Sacramento, California 95814
Telephone (916) 444-0154

December 30, 1976

Mr. Paul De Falco, Jr.
Regional Administrator
United States Environmental
Protection Agency
Region IX
100 California Street
San Francisco, CA 94111

Dear Mr. De Falco:

Pacific Legal Foundation, as a nonprofit public-interest law firm, has examined the legal basis for the requirements emanating from the EPA and the State Water Quality Control Board concerning discharges from the City of Los Angeles Hyperion Treatment Plant. This letter contains our conclusions on the law and our request for EPA to take certain corrective actions which we believe to be in the public interest.

It is our understanding that EPA bases the requirements it is making concerning the elimination of the discharge of digested sewage sludge to ocean waters and the achievement of secondary treatment standards for effluent from the Hyperion Plant on the belief that these requirements are mandated by Congress in the Federal Water Pollution Control Act Amendments of 1972. PL 92-500. For that reason, EPA has not and will not consider developing reasonable standards for the discharges from the Hyperion Plant based on the environmental impact to the ocean area concerned.

We disagree with this reading of the law. In fact, the law applicable to ocean discharges specifically requires thorough consideration of the environmental impacts of such discharges and the setting of reasonable standards based upon the analysis of such environmental impacts. EPA's own regulations governing the requirements for

ocean discharges specifically state this same interpretation. For these reasons, it is requested that EPA immediately suspend any orders, requirements or permit conditions directed toward the City of Los Angeles concerning the cessation of ocean discharge of digested sewage sludge or the upgrading of wastewater treatment facilities which discharge to the ocean to secondary treatment standards. Specifically, requirements to this effect in NPDES Permit CA 0109991 and any approved federal grants are to be suspended and no such requirements included in future permits or grant approvals until a thorough environmental analysis has been completed and standards developed for the affected ocean area based on the environmental aanlysis as required by law.

We have been informed that EPA is basing its present requirements on Section 301(b)(1)(B) of PL 92-500. EPA is reading into that section a requirement that all publicly owned wastewater treatment plants must achieve secondary treatment technology regardless of where the plant is located and how it is operated. Section 301 must be read in the context of the entire act.

We must call to your attention that the definitions of "discharge of pollutants" as used in Section 101(a)(1) and "effluent limitations" as used in Section 301(b)(1)(B) carefully preserve the distinction between navigable waters and ocean waters. Sections 501(11) and (12). These distinctions clearly convey the intention of Congress that requirements concerning discharges to the different waters were not indiscriminately lumped together.

To the extent that PL 92-500 is directed towards discharges into the ocean waters, a specific provision is included as Section 403. The requirements of Section 403 differ substantially from Section 301 in that the standards to be applied are not to be based on technological achievement, but rather on environmental impacts. It is clear that, as stated in the EPA's own regulations, Section 403(c) requires "that applications for permits for the dumping or other discharge of any materials into the marine environment be evaluated on the basis of

the impact of the materials on the marine environment . . ., and on the economic and social factors involved." 40 C.F.R. 227.1(c). EPA's regulations also make it clear that these requirements apply to "discharge through outfalls." 40 C.F.R. 227.1(b).

It is also pertinent to note that shortly after the passage of PL 92-500, directed primarily at the protection of navigable waters, the same Congress felt it appropriate to pass PL 92-532, directed at protection of ocean waters. The requirements for criteria in this second law are very similar to Section 403 of PL 92-500—so similar, in fact, that EPA has chosen to adopt a single set of regulations to implement both. 40 C.F.R. 227. In this second law, Congress reaffirmed its intention that control of pollutants in the ocean be based on criteria concerning the impact on the marine environment. Section 102.

Since the definition of navigable waters (to which Section 301 applies) includes "territorial seas" (Section 502(7)) and since Section 403 by its terms applies directly to the "territorial seas," there is the potential for some initial confusion as to the application of these two sections. However, Section 403 is a specific requirement by Congress that NPDES Permits issued pursuant to Section 402 "for a discharge into the territorial sea" must be issued in compliance with the guidelines established under the requirements of Section 403 "for determining of the degradation of the waters of the territorial seas. . .". EPA openly admits in the regulations published pursuant to Section 403 that this section contains a congressional mandate that discharges must be "evaluated on the basis of the impact on the marine environment. . ." 40 C.F.R. 227.1(c). This specific mandate by Congress cannot be avoided by reference to Section 301 which is a general section on "Effluent limitations."

As an additional factor of significance, it should be noted that the Hyperion Treatment Plant discharges effluent and sludge not to the "territorial seas" but to the "contiguous zone," an area clearly included in PL 92-500

in Section 403 *only*. Only a single emergency outfall discharges into the territorial sea and such discharges are rare.

While Congress may have intended a uniform national requirement for discharges to the navigable waters based on treatment technology, it is clear that the congressional intent in the case of discharges to the oceans was that requirements would be based on the environmental impacts likely to result.

The requirements in Section 403(c) of PL 92-500 and Section 102(c) of PL 92-532 for a complete environmental analysis, including economic and social factors, of the marine environment are separate and distinct from the requirement for the development of an Environmental Impact Statement under the National Environmental Policy Act. While we hold grave reservations as to the legality and, in particular, the appropriateness of EPA's use of a "negative declaration" for the Hyperion Plant in lieu of an EIS, we are not asserting that matter here. It is clear that the requirements of PL 92-500 and PL 92-532 can not be set aside by a "negative declaration" and that a comprehensive environmental review must be performed to comply with these laws. It would be most appropriate from the standpoint of the public interest for EPA to prepare a single comprehensive analysis which would conform to the full requirements for study, analysis, public participation, open disclosure and open decision making of all three laws.

We have been informed that substantial scientific and technical information exist which show that requirements for the Hyperion Treatment Plant if developed pursuant to Section 403(c) of PL 92-500 and Section 102(c) of PL 92-532 would not require secondary treatment for all discharges. We have also been informed that a full review as required by the applicable laws, including the economic and social factors involved, would most likely indicate that shifting of the disposal of all sludge from ocean waters to landfill would be environmentally, economically and socially undesirable.

Under these circumstances, we believe EPA has a duty to suspend the present requirements in NPDES Permit No. CA 0109991 relating to the cessation of discharge of sludge to ocean waters and to the upgrading of the Hyperion Plant technology to secondary treatment levels. No similar requirements should be included in a future permit until a full environmental analysis, including economic and social factors of the ocean discharge of effluent and sludge, has been completed. As soon as possible, a new NPDES permit should be issued to the City of Los Angeles including only those conditions necessary to provide adequate protection to the marine environment directly affected by the discharge from the Hyperion Plant in proper balance with the economic and social costs involved.

Sincerely,

RONALD A. ZUMBRUN
President and Legal
Director

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

[SEAL]

REGION IX
100 California Street
San Francisco, California 94111

CERTIFIED MAIL No. 450175 Jan. 31, 1977

Ronald A. Zumbrun
President and Legal Director
Pacific Legal Foundation
455 Capitol Mall, Suite 465
Sacramento, California 95814

Dear Mr. Zumbrun:

After giving careful consideration to your letter dated December 30, 1976, I have concluded that I must deny your request for the immediate suspension of the requirements of the NPDES permit issued for the City of Los Angeles Hyperion Treatment Plant. My conclusion is based upon the following considerations.

Section 301(b)(1)(B) of the Federal Water Pollution Control Act Amendments of 1972 (33 U.S.C. § 1311(b)(1)(B)) provides expressly that all publicly owned treatment works in existence on July 1, 1977, shall achieve "effluent limitations based upon secondary treatment as defined by the Administrator pursuant to section 304(d)(1) of this Act." In turn, section 304(d)(1) (33 U.S.C. § 1314(d)(1)) requires the Administrator to publish "information, in terms of amounts of constituents and chemicals, physical, and biological characteristics of pollutants, on the degree of effluent reduction attainable through the application of secondary treatment." Neither section 301 nor 304 offers any indication that publicly owned treatment works discharging to ocean waters should be exempted from secondary treatment requirements. Thus, under a plain reading of section 301(b)(1)(B), all publicly owned treatment works, including those discharging

to ocean waters must achieve effluent limitations based upon secondary treatment.

This conclusion was affirmed by the General Counsel of EPA in a decision of law concerning the NPDES permit issued to the Greater Anchorage Borough. (NPDES Decision of Law No. 12). Like the Hyperion Plant, the treatment works owned by the Greater Anchorage Borough discharges directly to the ocean. The General Counsel ruled that this fact does not exempt the facility from the secondary treatment requirement of section 301(b)(1)(B).

In your letter, you point out that the definition of the terms "discharge of pollutants" and "effluent limitations" in section 501 of FWPCA (33 U.S.C. § 1361) preserve the distinction between navigable waters and ocean waters. Although it is true that these definitions use the terms navigable waters and oceans rather than using a single term for both, the important point is that both navigable waters and ocean waters are covered by the definitions. The reference to "effluent limitations" in sections 301(b)(1)(B) and 304(d)(1) thus requires the Administrator to establish effluent limitations based upon secondary treatment for both discharges to navigable waters and discharges to ocean waters. Similarly, the use of the term "discharge of pollutants" in section 402 (a)(1) requires the issuance of NPDES permits for discharges to ocean waters as well as for discharges to navigable waters. Furthermore, section 402 provides that NPDES permits must include the condition that each discharge will meet *all* applicable requirements of section 301 and 403. Section 402 thus requires EPA to issue NPDES permits for ocean discharges from municipal treatment works which contain effluent limitations based on secondary treatment as defined by the Administrator.

The regulations published by the Administrator defining the requirements of secondary treatment do not authorize less stringent effluent limitations for treatment works discharging to ocean waters. (40 C.F.R. § 133). The limitations established in this regulation for biological oxygen demand and suspended solids, moreover,

preclude the discharge of sewage sludge as well as primary effluent. In view of these requirements, it would be irresponsible to suspend the conditions of the NPDES permit issued to the City of Los Angeles for the Hyperion Plant.

An opportunity for any interested party to contest the conditions of the NPDES permit for the Hyperion Plant was available at the time that the permit was issued in August 1975. Although any interested person could have requested an adjudicatory hearing under 40 C.F.R. section 125.36, neither the City of Los Angeles nor any one else contested the conditions of the permit. In view of the fact that section 125.36 provides a specific procedure for review of the conditions of a permit, it would be inappropriate to reopen consideration of the NPDES permit for the Hyperion Plant at this date.

Regarding your request that EPA suspend the grant conditions for the Hyperion Treatment Plant, I have concluded that such action would be irresponsible and must be denied. The grant conditions requiring the elimination of discharges of sewage sludge and primary effluent were proposed by EPA pursuant to 18 C.F.R. § 601.25 (b) (36 F.R. 13029) and were accepted by the City of Los Angeles. As such, these conditions represent mutually agreed upon contractual obligations between EPA and the City of Los Angeles. With respect to future grants, section 201(g)(2) of FWPCA prohibits EPA from making grants for the construction of wastewater treatment works after fiscal year 1974 unless the grant applicant has demonstrated that the project will provide for the application of the best practicable waste treatment technology. Like section 301(b)(1)(B), section 201(g)(2) does not provide an exemption for projects which will discharge to ocean waters. Section 201 (g)(2) of FWPCA thus prohibits EPA from making grants to applicants which will not utilize at least secondary treatment technology. In view of this requirement, it is clear that any future grants to the City of Los Angeles must also include conditions requiring the

removal of sewage sludge and the achievement of effluent limitations based on secondary treatment.

Sincerely,

/s/ Paul DeFalco, Jr.
PAUL DEFALCO, JR.
Regional Administrator

California Regional Water Quality Control Board
Los Angeles Region
(213) 620-4460
Order No.
Amended Waste Dicharge Requirements

Environmental Protection Agency
Region IX
(415) 556-3430
Permit No. CA0109991
Amended Authorization to Discharge under the National Pollutant Dicharge Elimination System—Federal Water Pollution Control Act (33 U.S.C. 125 et. seq.)

FOR
CITY OF LOS ANGELES
HYPERION TREATMENT PLANT

The California Regional Water Quality Control Board, Los Angeles Region and the Regional Administrator, Environmental Protection Agency, Region IX, finds that:

1. City of Los Angeles discharges wastes under requirements contained in Order No. 75-100 adopted by this Board and the Regional Administrator on August 18, 1975. On December 1, 1975, May 24, 1976, and November 22, 1976, this Regional Board adopted Orders Nos. 75-165, 76-80 and 76-202 respectively, amending the time schedules contained in Order No. 75-100. Order No. 75-100 expires on February 1, 1977.
2. City of Los Angeles has filed a report of waste discharge and applied for renewal of its waste discharge requirements and National Pollutant Discharge Elimination System Permit prior to the expiration of the current requirements and Permit.
3. Adequate review time will not be available for the tentative waste discharge requirements prior to the expiration date of the current Order.
4. The City of Los Angeles has prepared a final environmental impact report in accordance with the California Environmental Quality Act (Public Resources Code Section 21000 et. seq.).

5. The City of Los Angeles has changed or altered the project as follows:

   a) Discharge of chlorinated secondary effluent out the 1-mile outfall during installation of the eductor—construction schedule has been arranged such that there should be no interruption of beach usage

   b) Discharge of primary effluent during construction of secondary facilities—construction activities have been timed so that primary effluent will be discharged out the 5-mile outfall instead of the 1-mile outfall.

   c) Cessation of sludge discharge to ocean-landfills utilized will have a shortened useful life —however, no other alternative is currently available. The problem is being studied by the State Water Resources Control Board and the Los Angeles/Orange Metropolitan Area Study Group.

6. The changes or alterations of the project mitigate or avoid the significant or lasting adverse environmental impacts of the project.

The Board and Regional Administrator have notified the discharger and interested agencies and persons of their intent to amend the waste discharge requirements and permit for this discharge and have provided them with an opportunity to submit their written views and recommendations.

The Board and the Regional Administrator in a public hearing heard and considered all comments pertaining to the tentative amended requirements and permit.

This National Pollutant Discharge Elimination System permit amendment shall take effect 30 days from the date of signature. The amendment to the State requirements is effective upon signature.

IT IS HEREBY ORDERED, that Order No. 75-100 adopted by this Board on August 18, 1975, and NPDES

Permit No. CA0109991 issued by the Regional Administrator on August 18, 1975, shall be revised as follows:

1. The expiration date in Provision F-5 is changed from February 1, 1977, to June 30, 1977.

2. All other limitations, prohibitions, requirements, and provisions of Order No. 75-100 and NPDES Permit No. CA0109991 shall remain in full force and effect.

This certifies that the foregoing is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Control Board, Los Angeles Region, and of a National Pollutant Discharge Elimination Systems permit amendment issued by the Environmental Protection Agency, Region IX.

/s/ Raymond M. Hertel
RAYMOND M. HERTEL
Executive Officer

Date: January 24, 1977

/s/ William H. Pierce
WILLIAM H. PIERCE
Chief, Permits Branch,
Enforcement Division
for the Regional
Administrator

Date: January 24, 1977

STATE OF CALIFORNIA—RESOURCES AGENCY

EDMUND G. BROWN, JR., Governor

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD—LOS ANGELES REGION

[SEAL]

107 South Broadway, Suite 4027
Los Angeles, California 90012
(213) 620-4460

Jan. 27, 1977

City of Los Angeles
Bureau of Engineering
Room 800, City Hall
Los Angeles, California 90012

ATTENTION: Mr. Donald C. Tillman
City Engineer

RE: Waste Discharge Requirements (NPDES Permit No. CA0109991)

Gentlemen:

Reference is made to our letter lated January 14, 1977, which transmitted a copy of a tentative Order that proposed extending the expiration date of Order No. 75-100 and NPDES No. 0109991 to June 30, 1977.

In accordance with the administrative procedures, this California Regional Water Quality Control Board and the Environmental Protection Agency, held a joint public hearing on January 24, 1977. At the hearing, the Board reviewed the tentative Order and adopted Order No. 77-1 which extends the expiration date contained in Order No. 75-100 to June 30, 1977. The remainder of Order No. 75-100 remains in effect.

The representative of the Regional Administrator, EPA, recommended issuance of the amended NPDES Permit

No. CA109991 (copy attached) relative to this waste discharge.

Please note that additional Findings (Nos. 4 through 6) were added at the hearing.

If you have any questions, please call us.

Very truly yours,

Original signed by
Raymond M. Hertel
RAYMOND M. HERTEL
Executive Officer

cc: See attached mailing list

Enclosures

This certifies that the foregoing is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Control Board, Los Angeles Region, and of a National Pollutant Discharge Elimination Systems permit amendment issued by the Environmental Protection Agency, Region IX.

/s/ Raymond M. Hertel
RAYMOND M. HERTEL
Executive Officer

Date: January 24, 1977

/s/ William H. Pierce
WILLIAM H. PIERCE
Chief, Permits Branch,
Enforcement Division for
the Regional Administrator

Date: January 24, 1977

California Regional Water Quality Control Board
Los Angeles Region
(213) 620-4460
Order No.
Amended Waste Dicharge Requirements

Environmental Protection Agency
Region IX
(415) 556-3450
Permit No. CA0109991
Amended Authorization to Discharge under the National Pollutant Dicharge Elimination System—Federal Water Pollution Control Act (33 U.S.C. 125 et. seq.)

FOR
CITY OF LOS ANGELES
HYPERION TREATMENT PLANT

The California Regional Water Quality Control Board, Los Angeles Region and the Regional Administrator, Environmental Protection Agency, Region IX, find that:

1. City of Los Angeles discharges wastes under requirements contained in Order No. 75-100 adopted by this Board and the Regional Administrator on August 18, 1975. On December 1, 1975, May 24, 1976, and November 22, 1976, this Regional Board adopted Orders Nos. 75-165, 76-80 and 76-202 respectively, amending the time schedules contained in Order No. 75-100. Order No. 75-100 expires on February 1, 1977.
2. City of Los Angeles has filed a report of waste discharge and applied for renewal of its waste discharge requirements and National Pollutant Discharge Elimination System Permit prior to the expiration of the current requirements and Permit.
3. Adequate review time will not be available for the tentative waste discharge requirements prior to the expiration date of the current Order.
4. The City of Los Angeles has prepared a final environmental impact report in accordance with the California Environmental Quality Act (Public Resources Code Section 21000 et. seq.).
5. The City of Los Angeles has changed or altered the project as follows:

a) Discharge of chlorinated secondary effluent out the 1-mile outfall during installation of the eductor—construction schedule has been arranged such that there should be no interruption of beach usage

b) Discharge of primary effluent during construction of secondary facilities—construction activities have been timed so that primary effluent will be discharged out the 5-mile outfall instead of the 1-mile outfall.

c) Cessation of sludge discharge to ocean-landfills utilized will have a shortened useful life —however, no other alternative is currently available. The problem is being studied by the State Water Resources Control Board and the Los Angeles/Orange Metropolitan Area Study Group.

6. The changes or alterations of the project mitigate or avoid the significant or lasting adverse environmental impacts of the project.

The Board and Regional Administrator have notified the discharger and interested agencies and persons of their intent to amend the waste discharge requirements and permit for this discharge and have provided them with an opportunity to submit their written views and recommendations.

The Board and the Regional Administrator in a public hearing heard and considered all comments pertaining to the tentative amended requirements and permit.

This National Pollutant Discharge Elimination System permit amendment shall take effect 30 days from the date of signature. The amendment to the State requirements is effective upon signature.

IT IS HEREBY ORDERED, that Order No. 75-100 adopted by this Board on August 18, 1975, and NPDES Permit No. CA0109991 issued by the Regional Administrator on August 18, 1975, shall be revised as follows:

1. The expiration date in Provision F-5 is changed from February 1, 1977, to June 30, 1977.

2. All other limitations, prohibitions, requirements, and provisions of Order No. 75-100 and NPDES Permit No. CA0109991 shall remain in full force and effect.

cc: Environmental Protection Agency, Region IX, Reional Administrator, Attn: Permits Branch
U.S. Army Corps of Engineers
State Water Resources Control Board, Legal Division
Attn: Harry M. Schueller
Department of Fish and Game, Marine Resources Region
Department of Health, Water Sanitation Section
Department of Water Resources
State Department of Parks and Recreation
Department of Navigation and Ocean Development
State Lands Division
City of Los Angeles, City Engineer
City of Los Angeles, Bureau of Engineering
City of Los Angeles, Bureau of Sanitation
County of Los Angeles, Department of Health Services
Los Angeles County Department of Parks and Recreation
Los Angeles County Engineer, Project Planning and Pollution Control Division
Los Angeles County Engineer, Sanitation Division
County Sanitation Districts of Los Angeles County
City of Santa Monica
City of El Segundo
City of Manhattan Beach
City of Hermosa Beach
City of Redondo Beach
City of Torrance
Malibu Township Council

U.S. Naval Station, Long Beach
Ocean Fish Protective Association
Izaak Walton League of America
NOAA, National Marine Fisheries Service
U.S. Fish and Wildlife Service
Division of River Basin Studies
11th District U.S. Coast Guard, Long Beach
Environmental Protection Agency, Region IX, Contact Office
U.S. Fish and Wildlife Service
Attn: Regional Director
Mr. A. F. Peppermuller
Mr. Louis Fiske
Regional Wastewater Solids Management Program
Los Angeles-Orange County Metropolitan Area

State of California
Resources Agency

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD, LOS ANGELES REGION

ORDER NO. 77-29

AN ORDER AMENDING ORDER NO. 76-80 DIRECTING THE CITY OF LOS ANGELES TO COMPLY WITH REQUIREMENTS CONTAINED IN ORDER NO. 75-100

(CI 1492) (CA0109991) (M-1492)

The California Regional Water Quality Control Board, Los Angeles Region, finds:

1. City of Los Angeles discharges an average of 340 mgd (million gallons per day) of treated municipal wastewater and approximately 160 tons per day of sewage sludge to Santa Monica Bay from its Hyperion Treatment Plant in Playa del Rey under requirements prescribed jointly on August 18, 1975, by this Board and the United States Environmental Protection Agency in Order No. 75-100 (NPDES Permit No. CA0109991).
2. On December 1, 1975, this Board adopted Order No. 75,165, amending Order No. 75-100 and the NPDES Permit by modifying the time schedule for prohibition of sludge discharge to the ocean to provide for definite dates for compliance with the tasks required to comply with the Discharge Prohibition, as specified in Provisions B-1 and B-3 of Order No. 75-100.
3. On May 24, 1976, the Regional Board adopted Order No. 76-80, directing the City of Los Angeles to comply with a revised schedule for prohibition of sludge discharge to the ocean. The Order also authorized and directed the Executive Officer to request the Attorney General and District Attorney

to take the appropriate action against the discharger, including injunction and monetary remedies, in the event the City of Los Angeles failed to comply with any provision of Order No. 76-80.

4. Item 1 of Order No. 76-80 directed in part as follows:

Task	Completion Date Not Later Than	Report of Compliance Not Later Than
Award contract for demolition, trucks and dewatering equipment for Phases I, II, III & IV	December 1, 1976	December 15, 1976

5. On November 22, 1976, this Board adopted Order No. 76-202, revising the time schedule for compliance contained in Order No. 76-80, as follows:
   1. The time schedule for compliance contained in Item 1 is deleted, and replaced with the following:

"Task	Completion Date Not Later Than	Report of Compliance Not Later Than
Award contract for demolition, trucks and dewatering equipment for Phases I, II, III & IV	December 1, 1976	December 15, 1976
Submit plans and specifications necessary to meet Phase I	January 1, 1977	January 15, 1977
Award contract for Phase I support System	May 1, 1977	May 15, 1977
Submit final plans and specifications for Phases II, III & IV	November 1, 1977	November 15, 1977
Award contract for Phases II, III, & IV support system	April 1, 1978	April 15, 1978

Task	Completion Date Not Later Than	Report of Compliance Not Later Than
Complete construction of Phase I and achieve operational level	August 1, 1978	August 15, 1978
Complete construction of Phase II and achieve operational level	April 1, 1979	April 15, 1979
Complete construction of Phase III and achieve operational level	October 1, 1979	October 15, 1979
Complete construction of Phase IV and achieve operational level	April 1, 1980	April 15, 1980

City of Los Angeles shall submit to the Regional Board, the State Water Resources Control Board, and the Regional Administrator of Environmental Protection Agency on or before each compliance report date, a report on compliance or non-compliance with the specific schedule date and task.

If non-compliance is being reported, the reasons for such non-compliance shall be stated, plus an estimate of the date when City of Los Angeles will be in compliance. City of Los Angeles shall notify the Regional Board, the State Water Resources Control Board, and the Regional Administrator of Environmental Protection Agency by letter when it has returned to compliance with the time schedule."

6. On January 24, 1977, this Board and the Regional Administrator of the Environmental Protection Agency adopted Order No. 77-1, extending the expiration date of Order No. 75-100 (NPDES Permit No. CA0109991) from February 1, 1977, to June 30, 1977.

7. On December 16, 1976, the Regional Board received a report from the City of Los Angeles relative to compliance with the Task, "Award contract for

demolition, trucks and dewatering equipment for Phases I, II, III & IV". The report stated that contracts for demolition and for dewatering equipment had been awarded on December 7 and 10, 1976, respectively; but that the contract for trucks had not yet been awarded.

8. The completion date specified in Orders Nos. 76-80 and 76-202 for the Task, "Award contract for demolition, trucks and dewatering equipment for Phases I, II, III & IV" was December 1, 1976. City of Los Angeles has not complied with the completion date specified in the Orders.

9. City of Los Angeles has complied with the January 1, 1977, date specified in Order No. 76-202 for completion of the Task, "Submit plans and specifications necessary to meet Phase I".

10. Delay in awarding the contract for trucks for Phases I, II, III & IV will not affect compliance with the completion for the Task, "Complete construction of Phase I and achieve operational level", nor will it affect compliance with later completion dates for subsequent Tasks, provided the necessary trucks for each Phase are available before completion of construction for that Phase.

By letter dated February 11, 1977, the Board has notified the discharger and interested persons of its intent to conduct a public hearing concerning violation or threatened violation of requirements, and plans and time schedules for obtaining compliance.

The Board in a public hearing heard and considered all testimony pertinent to the matter.

All Orders referred to above and records of hearings and testimony therein are included herein by reference.

IT IS HEREBY ORDERED, that Order No. 76-80 adopted by this Board on May 24, 1976, is amended as follows:

A. The time schedule for compliance contained in Item 1 is deleted, and replaced with the following:

"Task	Completion Date Not Later Than	Report of Compliance Not Later Than
Award contract for Phase I support system	May 1, 1977	May 15, 1977
Submit final plans and specifications for Phases II, III & IV	November 1, 1977	November 15, 1977

"Task	Completion Date Not Later Than	Report of Compliance Not Later Than
Award contract for Phases II, III, & IV support system	April 1, 1978	April 15, 1978
Complete construction of Phase I and achieve operational level	August 1, 1978	August 15, 1978
Complete construction of Phase II and achieve operational level	April 1, 1979	April 15, 1979
Complete construction of Phase III and achieve operational level	October 1, 1979	October 15, 1979
Complete construction of Phase IV and achieve operational level	April 1, 1980	April 15, 1980

City of Los Angeles shall submit to the Regional Board, the State Water Resources Control Board, and the Regional Administrator of Environmental Protection Agency on or before each compliance report date, a report on compliance or non-compliance with the specific schedule date and task.

If non-compliance is being reported, the reasons for such non-compliance shall be stated, plus an estimate of the date when City of Los Angeles will be in compliance. City of Los Angeles shall notify the Regional Board, the State Water Resources Control Board, and the Regional Administrator of Environmental Protection Agency by letter when it has returned to compliance with the time schedule."

B. City of Los Angeles shall assure that all trucks necessary to conduct routine operations for each Phase are on hand and ready prior to completion of construction of that Phase. To this end, City of Los Angeles shall submit to the Regional Board, the State Water Resources Control Board, and the Regional Administrator of the Environmental Protection Agency reports of progress relative to obtaining the necessary trucks for each Phase in accordance with the following schedule:

Task	Due Not Later Than
Progress Report, Phase I	January 15, 1978
Progress Report, Phase I	April 15, 1978
Progress Report, Phase I	July 15, 1978
Progress Report	January 15, 1979
Progress Report	July 15, 1979
Progress Report	January 15, 1980

C. All other parts of Order No. 76-80 shall remain in full force and effect.

D. Order No. 76-202, adopted November 22, 1976, is hereby rescinded.

I, Raymond M. Hertel, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Control Board, Los Angeles Region, on February 28, 1977.

/s/ Raymond M. Hertel,
RAYMOND M. HERTEL,
Executive Officer

I, Richard A. Harris, am Assistant Executive Officer of the California Regional Water Quality Control Board, Los Angeles Region, and certify that this record is a true and complete copy of the original document.

/s/ Richard A. Harris
RICHARD A. HARRIS

WILLIAM D. KELLER
United States Attorney
BARRY TRILLING
Assistant United States Attorney
1100 United States Courthouse
312 North Spring Street
Los Angeles, California 90012
Telephone: (213) 798-2450

DAVID R. ANDREWS
Regional Counsel
ANTHONY O. GARVIN
Assistant Regional Counsel
U.S. Environmental Protection Agency
100 California Street
San Francisco, California 94111
Telephone: (415) 556-2068

Attorneys for Defendants John R. Quarles, Jr., Paul DeFalco, Jr., and U.S. Environmental Protection Agency

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

Civil No. 77-0521 HP

PACIFIC LEGAL FOUNDATION, ET AL., PLAINTIFF

v.

JOHN R. QUARLES, JR., ET AL., DEFENDANTS

AFFIDAVIT OF PAUL DE FALCO, JR.

STATE OF CALIFORNIA)
) SS
COUNTY OF SAN FRANCISCO)

Paul De Falco, Jr. being duly sworn, deposes and says:

1. I am the Regional Administrator, Region IX, United States Environmental Protection Agency (EPA), San Francisco, California. In my capacity as Regional

Administrator, I am the chief executive officer for EPA in Region IX and am responsible for administration of EPA's programs in Arizona, California, Hawaii, Nevada, Guam, American Samoa, and the Trust Territories.

2. Under Title II of the Federal Water Pollution Control Act Amendments of 1972 (FWPCA), 33 U.S.C. § 1281 *et seq.*, the Administrator of EPA is authorized to award grants to municipalities for construction of wastewater treatment facilities. The authority of the Administrator of EPA to award grants under Title II of FWPCA has been delegated by the Administrator to the Regional Administrators of EPA.

3. Under an agreement signed May 23, 1975, general administration of the construction grant program of Title II of FWPCA was delegated to the California State Water Resources Control Board (SWRCB). The agreement, however, did not delegate to the SWRCB the actual authority to award Federal construction grants. The final decision making authority for award of Federal construction grants in California is thus my responsibility as Regional Administrator.

4. On August 22, 1975, the City of Los Angeles submitted an application for a grant under Title II of FWPCA, for construction of an interim sludge processing and disposal system for the Hyperion treatment plant. The City had previously submitted a Project Report to EPA in 1975 which discussed the feasibility of the Interim Sludge Project.

5. The proposed Interim Sludge Disposal Project is designed to eliminate the discharge of sewage sludge to the ocean from the Hyperion plant until an ultimate solution for the disposal of sludge is developed. The City of Los Angeles is presently a participant in a cooperative effort with Los Angeles County and Orange County to develop a facilities plan and joint Environmental Impact Report/Environmental Impact Statement (EIR/EIS) regarding alternatives for the ultimate disposal of sewage sludge. This effort is partially funded by a grant from EPA under Title II of FWPCA.

6. In accordance with EPA's Guidelines for Compliance with NEPA in the Title II Wastewater Treatment

Works Construction Grants Program (40 C.F.R. § 6.512), EPA prepared an Environmental Impact Appraisal for the Interim Sludge Disposal Project which was issued on November 18, 1976. (Attachment Q, Memorandum in Support of Motion To Dismiss). The Environmental Impact Appraisal contained a discussion of the anticipated impact of the project on the environment, a discussion of mitigation measures to be taken, and a dission of alternatives to the proposed project.

7. On the basis of the Environmental Impact Appraisal and the EIR prepared by the City of Los Angeles, EPA issued a Negative Declaration on November 18, 1976, regarding the environmental impact of the Hyperion interim sludge project. (Attachment P, Memorandum in Support of Motion to Dismiss). The Negative Declaration stated that it was EPA's conclusion that the proposed project would not have significant environmental impacts and that EPA had made a preliminary decision not to prepare an Environmental Impact Statement.

8. The City of Los Angeles is presently developing a facilities plan covering all aspects of future wastewater treatment, which is referred to as the City of Los Angeles Wastewater Facilities Plan. This plan will include a detailed discussion of alternative means of achieving effluent limitations based upon secondary treatment at the City's existing treatment facilities and a discussion of the Interim Sludge Disposal Project. The City and EPA are also developing a joint EIR/EIS covering the environmental impact of the City of Los Angeles Wastewater Facilities Plan. Preparation of the plan and the joint EIR/EIS is partially funded by a grant from EPA under Title II of FWPA.

9. The EIR/EIS for the City of Los Angeles Wastewater Facilities Plan will include a detailed analysis of the potential environmental impact of the Interim Sludge Disposal Project. This analysis will include a discussion of alternatives to the Interim Sludge Disposal Project and a discussion of the environmental impacts of the present disposal of sludge to the ocean.

10. In view of the controversy regarding the Hyperion Interim Sludge Project which arose subsequent to the issuance of the Negative Declaration and Environmental Impact Appraisal, I have decided that EPA should not award a grant to the City of Los Angeles for construction of the project until the public has had a further opportunity to comment on the environmental impact of the project. I have, therefore, directed that no action should be taken on the grant application submitted by the City of Los Angeles for the Hyperion Interim Sludge Project until the requirements of the National Environmental Policy Act have been satisfied with respect to the EIR/EIS for the City of Los Angeles Wastewater Facilities Plan.

/s/ Paul De Falco, Jr.
PAUL DE FALCO, JR.

Subscribed and sworn to before me this 18th day of April, 1977.

/s/ Melinda Taflin
Notary Public

My Commission expires July 6, 1980.

CERTIFICATE OF SERVICE BY MAIL

I, Queen E. Sirls, declare: That I am a citizen of the United States and resident or employed in Los Angeles County, California; that my business address is Office of the United States Attorney, United States Court House, 312 North Spring Street, Los Angeles, California 90012; that I am over the age of eighteen years, and am not a party to the above-entitled action; That I am employed by the United States Attorney for the Central District of California who is a member of the Bar of the United States District Court for the Central District of California, at whose direction the service by mail described in this Certificate was made; that on April 22, 1977, I deposited in the United States Mails, in the United States Court House, 312 North Spring Street, Los Angeles, California, in the above-entitled action, in an envelope bearing the requisite postage, a copy of Affidavit of Paul De Falco, Jr. addressed to:

Thomas E. Hookano, Esq.
Capitol Mall
Suite 465
Sacramento, Calif.
Plaintiff's Attorney

Stanley E. Remelmeyer, Esq.
City Attorney
3031 Torrance Blvd.
Torrance, Calif. 90503

Emil Stipanovich
Deputy Attorney General
3580 Wilshire Blvd.
Los Angeles, Ca. 90003

their last known address, at which place there is a delivery service by United States Mail.

This Certificate is executed on April 22, 1977, at Los Angeles, California.

I certify under penalty of perjury that the foregoing is true and correct.

/s/ Queen E. Sirls
QUEEN E. SIRLS

CERTIFICATE OF SERVICE BY MAIL

I, Barbara Gordon, certify as follows:

I am a citizen of the United States, residing or employed in Sacramento, California;

My business address is 455 Capitol Mall, Suite 465, Sacramento, California;

I am over the age of eighteen years, and am not a party to the above entitled action;

On November 3, 1977, true copies of the REPLY MEMORANDUM IN OPPOSITION TO MOTION FOR STAY PENDING REVIEW were placed in envelopes addressed to:

JAMES W. MOORMAN
Assistant Attorney General
ANGUS MACBETH
Chief, Pollution Control Section
RAYMOND W. MUSHAL
Attorney
Pollution Control Section
Department of Justice
Washington, D.C. 20530

BURT PINES, Esquire
City Attorney
21st Floor, City Hall
Los Angeles, CA 90012

RICHARD TERZIAN, Esquire
Burke, Williams and Sorensen
707 Wilshire Boulevard
Los Angeles, CA 90012

Regional Counsel
Environmental Protection Agency
Region 9
100 California Street
San Francisco, CA 94111

STANLEY E. REMELMEYER
City Attorney
3031 Torrance Boulevard
Torrance, CA 90503

which envelopes, with postage thereon fully prepaid, were then sealed and deposited in a mail box regularly maintained by the United States Government in Sacramento, California.

Executed on November 3, 1977, at Sacramento, California.

/s/ Barbara Gordon
BARBARA GORDON

[EMBLEM]

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY
Region IX
100 California Street
San Francisco, California 94111

In reply refer to:
E-4-1 869.2D

Mr. Warren A. Hollier, President
Board of Public Works
200 N. Spring Street, Room 353
Los Angeles, Ca. 90012

Apr. 26, 1977

Dear Mr. Hollier:

In accordance with the Federal Water Pollution Control Act [33 U.S.C. 1251 et seq.], the Environmental Protection Agency, Region IX, issued the following National Pollutant Discharge Elimination System (NPDES) Permit to:

Discharger	NPDES No.
Hyperion Treatment Plant	CA0109991

Since then, modifications to the permit have been proposed. A copy of the Public Notice of these proposed modifications is enclosed. Comments on the proposed modifications, or a request for a public hearing may be submitted to this office within thirty (30) days following the date of this Public Notice. Should the Regional Administrator find a significant degree of public interest exists, a public hearing shall be held.

If no hearing is held, we expect to issue the permit modifications shortly after the expiration date of the thirty (30) day comment period. Should you have any

questions concerning this matter, please contact our Permits Branch at 415-556-3450.

Sincerely,

/s/ William H. Pierce
WILLIAM H. PIERCE
Chief, Permits Branch
Enforcement Division

Enclosures:

cc: California RWQCB—Los Angeles, Central Coast
U.S. Fish and Wildlife Service, Laguna Niguel
Corps of Engineers, Los Angeles
11th Coast Guard District
National Marine Fisheries Service,
Terminal Island, Ca.

[EMBLEM]

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region IX
100 California Street
San Francisco, California 94111

NOTICE OF PROPOSED ACTION

by the

U.S. Environmental Protection Agency
Region IX
100 California Street
San Francisco CA 94111

415/556-3450

on Modification of a National Pollutant Discharge Elimination System Permit to Discharge Pollutants to Waters of the United States

Public Notice

C-77-18-W(M)

April 27, 1977

On December 18, 1974, the Regional Administrator, Region IX, Environmental Protection Agency, issued a National Pollutant Discharge Elimination System (NPDES) permit to the following discharger:

City of Los Angeles—Hyperion Treatment Plant
200 N. Spring Street
Los Angeles, Ca. 90012
NPDES Permit No. CA0109991

The City of Los Angeles operates a municipal wastewater treatment plant located at 12000 Vista Del Mar, Playa Del Rey, Los Angeles, California. All wastewater receives primary treatment at the plant. Approximately

thirty percent receives additional secondary treatment by the activated sludge process. Sludge is digested anaerobicly. Three existing discharge points to the Pacific Ocean are used. The combined treated effluent (primary and secondary) is discharged through the first. This outfall terminates 26,525 feet offshore in 187 feet of water. The enter of the discharge point is located at coordinates: latitude 33°54′45″ N, and longitude 118° 31′15″ W. The second outfall discharges secondary effluent during emergencies; it is flushed weekly with secondary effluent in routine maintenance operations. This outfall terminates 5360 feet offshore in 50 feet of water. The discharge point has coordinates: latitude 33°55′05″ N, and longitude 118°26′52″ W. The third outfall discharges digested sludge which has been diluted with secondary effluent. This outfall terminates 35,570 feet offshore in 300 feet of water at coordinates: latitude 33°55′35″ N, and longitude 118°33′15″ W.

The beneficial uses of the receiving waters are:

Nearshore Zone: (includes water generally less than 18 feet deep or those waters within 1,000 feet of the shoreline): aesthetic enjoyment; ocean water contact sport (swimming, surfing, skindiving); propagation and sustenance of marine life, including kelp and shore birds; shellfish harvesting; scientific research and training; sport fishing; commercial fishing; pleasure boating; commercial and naval shipping; and industrial water supply.

Offshore Zone: (includes all waters located between the nearshore zone and the seaward boundary of the Region): aesthetic enjoyment; propagation and sustenance of marine life; scientific research and training; sport fishing; commercial fishing; pleasure boating; commercial and naval shipping; and industrial water supply.

The Regional Administrator proposes to extend the expiration date of the permit from June 30, 1977 to December 17, 1979. All other terms and conditions of the permit would remain unchanged.

Persons wishing to comment upon objections to the proposed modification(s), or request a public hearing pursuant to 40 CFR 125.34 should submit their comments or requests in writing within thirty (30) days from the date of this notice, either in person or by mail to:

U.S. Environmental Protection Agency
Region IX, Enforcement Division, ENPPN
100 California Street
San Francisco CA 94111

Telephone: 415/556-3450

All comments or objections received within thirty (30) days from the date of this notice, will be retained and considered in the formulation of the final determinations regarding the permit modification(s). When public interest warrants, the Regional Administrator may grant an extension of the thirty (30) day comment period for the submittal of comments or objections. If written comments indicate a significant degree of public interest in a proposed modification, the Regional Administrator shall hold a public hearing in accordance with 40 CFR 125.34. A public notice of such hearing will be issued not less than thirty (30) days prior to the hearing date.

If no public hearing is held and the final determinations of the Regional Administrator, after consideration of all comments and objections, are substantially unchanged from the tentative determinations, the Regional Administrator shall forward a copy of the final determinations to the permittee and to any person who has submitted written comments regarding the permit modification.

If no public hearing is held and the final determinations of the Regional Administrator are substantially changed from the tentative determinations, the Regional Administrator will give public notice of such determinations. The Regional Administrator shall forward a copy of the notice and a copy of the final determinations to the permittee and to any person who has submitted written comments regarding the permit modification.

The permit modification(s) will be considered issued thirty (30) days following the date they are signed by the Regional Administrator. The permit modification(s) will become effective thirty (30) days following the date they are signed by the Regional Administrator, unless he grants a written request for an adjudicatory hearing. Requests for an adjudicatory hearing must be filed within ten (10) days following the receipt of the final determinations and must meet the requirements of 40 CFR 125.36. All written requests for adjudicatory hearings should be addressed to the Regional Administrator, Environmental Protection Agency, Region IX, Attn: Regional Hearing Clerk, 100 California Street, San Francisco CA 94111.

If the Regional Administrator grants a request for an adjudicatory hearing, he shall give public notice of such hearing. Any person may submit a request to be admitted as a party within thirty (30) days after the publication date of the public notice of an adjudicatory hearing. If no adjudicatory hearing is requested, the permit modification will be issued or denied, as appropriate, and this action will be final.

The proposed modification, fact sheets if required, comments received, and other information are on file and may be copied at:

U.S. Environmental Protection Agency
(address and telephone number indicated above)

A copy of the proposed modification, fact sheets if required, and further information may be obtained by writing to the Regional Office of EPA at the above address or by calling the Permits Branch, Enforcement Division at 415/556-3450.

Please bring the foregoing notice to the attention of all persons whom you know would be interested in this matter.

[EMBLEM]

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY
Region IX
100 California Street
San Francisco, California 94111

In Reply E-5
Refer to: 863.

Warren A. Hollier, President
Board of Public Works
City of Los Angeles
373 City Hall
Los Angeles CA 90012

Dear Mr. Hollier:

We have reviewed the Board's request of April 4, 1977, for modifications to the compliance schedules for the interim sludge project and the secondary treatment project at the Hyperion Treatment Plant (NPDES Permit No. CA0109991).

The pertinent Federal Regulations (40 CFR 125.23(d)) provide that:

> "The Regional Administrator may, upon request of the applicant, and after public notice, revise or modify a schedule of compliance in an issued permit if he determines good and valid cause (such as an act of God, strike, flood, materials shortage, or other event over which the permittee has little or no control) exists for such revision."

Since we have no knowledge that such good and valid cause exists with respect to the City of Los Angeles, your request for permit modification cannot be granted.

If you have any question regarding this matter, please contact this office, at 415/556-7450.

Sincerely,

R. L. O'Connell

cc: Donald Tillman
LA RWQCB
CA WRCB

STATE OF CALIFORNIA—RESOURCES AGENCY

EDMUND G. BROWN, JR., Governor

[EMBLEM]

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD—LOS ANGELES REGION

107 South Broadway, Suite 4027
Los Angeles, California 90012
(413) 620-4460

May 2, 1977

City of Los Angeles
Bureau of Engineering
Room 800, City Hall
Los Angeles, California 90012

ATTENTION: Mr. Donald C. Tillman, City Engineer

RE: Tentative Waste Discharge Requirements
Hyperion Treatment Plant (NPDES No. CA0109991)

Gentlemen:

At its next regular public hearing, the California Regional Water Quality Control Board, Los Angeles Region, will consider extending the expiration date of Order No. 75-100 (NPDES Permit No. CA0109991) to December 17, 1979.

The hearing will be held on May 23, 1977, at 10:00 a.m., 107 South Broadway, Room 1138, Los Angeles, California.

Very truly yours,

Original signed by
Raymond M. Hertel
RAYMOND M. HERTEL
Executive Officer

cc: See attached mailing list

Enclosures

MAILING LIST

Regional Board Members
Environmental Protection Agency, Region IX
Regional Administrator, Attn: Permits Branch
Environmental Protection Agency, Region IX,
Enforcement Division
U. S. Army Corps of Engineers
State Water Resources Control Board, Legal Division
Department of Fish and Game, Marine Resources Region
Department of Health, Water Sanitation Section
Department of Water Resources
Department of Parks and Recreation
Department of Navigation and Ocean Development
State Lands Division
City of Los Angeles, City Council
City of Los Angeles, City Engineer
City of Los Angeles, Bureau of Engineering
City of Los Angeles, Bureau of Sanitation
City of Los Angeles, Wastewater Systems
Engineering Division
County of Los Angeles, Department of Health Services
Los Angeles County Department of Parks and Recreation
Los Angeles County Engineer, Project Planning and
Pollution Control Division
Los Angeles County Engineer, Sanitation Division
County Sanitation Districts of Los Angeles County
City of Santa Monica
City of El Segundo
City of Manhattan Beach
City of Hermosa Beach
City of Redondo Beach
City of Torrance
Malibu Township Council
U. S. Naval Station, Long Beach
Ocean Fish Protective Association
Izaak Walton League of America
NOAA, National Marine Fisheries Service
U. S. Fish and Wildlife Service
Division of Riven Basin Studies
11th District U.S. Coast Guard, Long Beach

Environmental Protection Agency, Region IX, Contract
Office
U.S. Fish and Wildlife Service, Attn: Regional Director
Mr. A. F. Peppermuller
Mr. Louis Fiske
Regional Wastewater Solids Management Program
Los Angeles-Orange County Metropolitan Area
California Regional Water Quality Control Board,
Santa Ana Region
California Regional Water Quality Control Board,
Central Coast Region

PUBLIC VOUCHER FOR ADVERTISING

For Agency Use Only	
VOUCHER NUMBER	
SCHEDULE NUMBER	24127
PAID BY	

DEPARTMENT OR ESTABLISHMENT, BUREAU OR OFFICE: ENVIRONMENTAL PROTECTION AGENCY

PLACE VOUCHER PREPARED: LOS ANGELES

DATE PREPARED: 5/3/77

NAME OF PUBLICATION: LOS ANGELES TIMES

NAME OF PUBLISHER OR REPRESENTATIVE: ANNE J HURLEY, CLASSIFIED ACCOUNTING

ADDRESS (Street, room number, city, State, and ZIP code): TIMES MIRROR SQ LOS ANGELES CALIF. 90053

CHARGES

TYPEFACE (size of type) POINT PER (inch, square, word, or folio)

LINE RATES

	NUMBER OR LINES (Indicate counted or space)	COST PER LINE	TOTAL COST
FIRST INSERTION	332	$ 3.10	$ 1,029.20
ADDITIONAL INSERTIONS GIVE NUMBER ▶			
TOTAL			$ 1,029.20

UNIT RATES

	NUMBER OF UNITS (Indicate inch, square, word, folio)	COST PER UNIT	TOTAL COST
FIRST INSERTION		$	$
ADDITIONAL INSERTIONS GIVE NUMBER ▶			
TOTAL			$

Attach one copy of advertisement (including upper and lower rules) to each copy of voucher here. If copy is not available sign the following affidavit.

TOTAL LINE RATES AND OTHER RATES	
LESS DISCOUNT AT %	
BALANCE DUE	$ 1029.20
VERIFIED (Initials)	

AFFIDAVIT

This represents a true billing for the attached advertising order, with specifications and copy, which has been completed.

SIGNATURE OF PUBLISHER OR REPRESENTATIVE: anne J. Hurley

TITLE: classified accounting DATE: 5/3/77

FOR AGENCY USE ONLY

ADVERTISEMENT PUBLISHED IN | DATE PUBLISHED

I certify that the advertisement described above appeared in the named publication and that this account is correct and eligible for payment.

SIGNATURE AND TITLE OF CERTIFYING OFFICER | DATE

SIGNATURE AND TITLE OF AUTHORIZING OFFICER | DATE

ACCOUNTING CLASSIFICATION | PAID BY CHECK NUMBER

6870106 RA0106 768009K001 2540 EST: $500.00

[1] If the ability to certify and authority to approve are combined in one person enter "N/A" (not applicable) here.

U.S. GPO: 1974—559-598

September 1973
4 Treasury FRM 2000 Standard Form 1143

ADVERTISING ORDER

AO-77-0320
ORDER NUMBER

DEPARTMENT OR ESTABLISHMENT, BUREAU OR OFFICE
US ENVIRONMENTAL PROTECTION AGENCY - REGION IX

DATE
04/26/77

The publisher of the publication named below is authorized to publish the enclosed advertisement according to the schedule below provided the rates are not in excess of the commercial rates charged to private individuals with the usual discounts. It is to be set solid, without paragraphing, and without any display in the heading unless otherwise expressly authorized in the specifications.

LOS ANGELES TIMES - Times Mirror Co., Times Mirror Square - Los Angeles, Ca. 90053
NAME OF THE PUBLICATION ADVERTISED IN

SUBJECT OF ADVERTISEMENT	EDITION OF PAPER ADVERTISEMENT APPEARED
PUBLIC NOTICE #C-77-18-W(M)	LEGAL CLASSIFIED
NUMBER OF TIMES ADVERTISEMENT APPEARED	DATE(s) ADVERTISEMENT APPEARED
ONE (1)	04/27/77

SPECIFICATIONS FOR ADVERTISEMENT

PLEASE NOTE: IMPORTANT ******
PAYMENT CAN NOT BE MADE UNTIL BACK OF THIS FORM IS COMPLETED.
ALSO SUBMIT TWO (2) COPIES OF AFFIDAVIT OF PUBLICATION.

COPY FOR ADVERTISEMENT

***** SEE ATTACHED *****

AUTHORITY TO ADVERTISE	INSTRUMENT OF ASSIGNMENT
NUMBER: EPA ORDER 1210.5a	NUMBER: N/A
DATE: December 13, 1973	DATE: N/A
SIGNATURE OF AUTHORIZING OFFICIAL: [signature] 4/26/77	TITLE: Acting Chief, Support Services Branch

INSTRUCTIONS TO PUBLISHERS

Extreme care should be exercised to insure that the specifications for advertising to be set other than solid be definite, clear, and specific since no allowance will be made for paragraphing or for display or leaded or prominent headings, unless specifically ordered, or for additional space required by the use of type other than that specified. Specifications for advertising other than solid and the advertisement copy submitted to the publisher will be attached to the voucher. The following is a sample of solid line advertisement set up in accordance with the usual Government requirements.

DEPARTMENT OF HIGHWAYS & TRAFFIC. D.C. Bids are requested for first spring 1966 cement concrete repair contract, including incidental work, Washington, D.C., Invitation No. C-6676-H, consisting of 11,000 sq. yds. PCC Class BB sidewalk repair and 2,000 cu. yds. PCC Class A pavement, alley, & driveway repair, both cut repairs only. Bidding material available from the Procurement Officer, D.C. Sealed bids to be opened in the Procurement Office at 3:00 p.m., November 15, 1966.

Your bill for this advertising order should be submitted on the "Public Voucher for Advertising" form, which is printed on the reverse of this form, immediately after the last publication of the advertisement. If copies of the printed advertisement are not available, complete the affidavit provided on the voucher. Submit the voucher and a copy of the printed advertisement to ▶.....

US ENVIRONMENTAL PROTECTION AGENCY
100 California Street
San Francisco, Ca. 94111 ATTN: PROCUREMENT

IMPORTANT

Charges for advertising when a cut, matrix, stereotype or electrotype is furnished will be based on actual space used and no allowance will be made for shrinkage.

In no case shall the advertisement extend beyond the date and edition stated in this order.

1143-107

NOTICE OF PROPOSED ACTION

by the

U.S. Environmental Protection Agency
Region IX
100 California Street
San Francisco, CA 94111

415/556-2450

on Modification of a National Pollutant Discharge Elimination System Permit to Discharge Pollutants to Waters of the United States

Public Notice
C-77-15-W(M)
April 27, 1977

On December 16, 1974, the Regional Administrator, Region IX, Environmental Protection Agency, issued a National Pollutant Discharge Elimination System (NPDES) permit to the following discharger:

City of Los Angeles—Hyperion Treatment Plant
200 N. Spring Street
Los Angeles, Ca. 90012
NPDES Permit No. CA0109991

The City of Los Angeles operates a municipal wastewater treatment plant located at 12000 Vista Del Mar, Playa Del Rey, Los Angeles, California. All wastewater received primary treatment at the plant. Approximately thirty percent receives additional secondary treatment by the activated sludge process. Sludge is digested anaerobicly. Three existing discharge points to the Pacific ocean are used. The combined treated effluent (primary and secondary) is discharged through the first. This outfall terminates 20,525 feet offshore in 187 feet of water. The center of the discharge point is located at coordinates: latitude 33°54'45" N, and longitude 118°31'815" W. The second outfall discharges secondary effluent during emergencies; it is flushed weekly with secondary effluent in routine maintenance operations. This outfall terminates 5330 feet offshore in 50 feet of water. The discharge point has coordinates: latitude 33°56'05" N, and longitude 118°26'32" W. The third outfall discharges digested sludge which has been diluted with secondary effluent. This outfall terminates 21,570 feet offshore in 200 feet of water at coordinates: latitude 33°55'28" N, and longitude 118°25'15" W.

The beneficial uses of the receiving waters are:

NEARSHORE ZONE: (Includes water generally less than 18 feet deep or those waters within 1,000 feet of the shoreline): aesthetic enjoyment; ocean water contact sport (swimming, surfing, skindiving); propagation and sustenance of marine life, including kelp and shorebirds; shellfish harvesting; scientific research and training; sport fishing; commercial fishing; pleasure boating; commercial and naval shipping; and industrial water supply.

OFFSHORE ZONE: (Includes all waters located between the nearshore zone and the seaward boundary of the Region): aesthetic enjoyment; propagation and sustenance of marine life; scientific research and training; sport fishing; commercial fishing; pleasure boating; commercial and naval shipping; and industrial water supply.

The Regional Administrator proposes to extend the expiration date of the permit from June 30, 1977 to December 17, 1979. All other terms and conditions of the permit would remain unchanged.

Persons wishing to comment upon or object to the proposed modification(s), or request a public hearing pursuant to 40 CFR 125.34 should submit their comments or requests in writing within thirty (30) days from the date of this notice, either in person or by mail to:

U.S. Environmental Protection Agency
Region IX, Enforcement Division, ENP2N
100 California Street
San Francisco, CA 94111

Telephone: 415/556-2450

All comments or objections received within thirty (30) days from date of this notice, will be retained and considered in the formulation of the final determinations regarding the permit modification(s). When public interest warrants, the Regional Administrator may grant an extension of the thirty (30) day comment period for the submittal of comments or objections. If written comments indicate a significant degree of public interest in a proposed modification, the Regional Administrator shall hold a public hearing in accordance with 40 CFR 125.34. A public notice of such hearing will be issued not less than thirty days prior to the hearing date.

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If the Regional Administrator grants a request for an adjudicatory hearing, he shall give public notice of such hearing. Any person may submit a request to be admitted as a party within thirty (30) days after the publication date of the public notice of an adjudicatory hearing. If no adjudicatory hearing is requested, the permit modification will be issued or denied, as appropriate, and this action will be final.

The proposed modification, fact sheets if required, comments received, and other information are on file and may be copied at:

U.S. Environmental Protection Agency
(address and telephone number indicated above)

A copy of the proposed modification, fact sheets if required, and further information may be obtained by writing to the Regional Office of EPA at the above address or by calling the Permit Branch, Enforcement Division at 415, 556-2450.

Please bring the foregoing notice to the attention of all persons whom you know would be interested in this matter.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

HONORABLE HARRY PREGERSON,
JUDGE PRESIDING

Civil No. 77-0521-HP

PACIFIC LEGAL FOUNDATION, ET AL., PLAINTIFFS

vs.

JOHN R. QUARLES, JR., ET AL., DEFENDANTS

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Los Angeles, California

Monday, May 23, 1977

SAMUEL GOLDSTEIN
Official Reporter
United States District Court
Los Angeles, California 90012
Telephones: 622-1678 and 622-2903

APPEARANCES:

For the Plaintiffs:

PACIFIC LEGAL FOUNDATION
By: Thomas E. Hookano
and
ROBERT K. BEST
455 Capitol Mall, Suite 465
Sacramento, California 95814

For the City of Torrance:

ROGER FREEMAN
3031 Torrance Boulevard
Torrance, California 90503

For the Federal Defendants:

WILLIAM D. KELLER
United States Attorney
By: BARRY J. TRILLING
Assistant United States Attorney
312 North Spring Street
Los Angeles, California 90012
and
ENVIRONMENTAL PROTECTION AGENCY
REGIONAL COUNSEL
By: ANTHONY O. GARVIN

For the State of California Defendants:

EVELLE J. YOUNGER
Attorney General
By: EMIL STIPANOVICH, JR.
Deputy Attorney General
800 Tishman Building
3580 Wilshire Boulevard
Los Angeles, California 90010

[3] LOS ANGELES, CALIFORNIA;
MONDAY, MAY 23, 1977; 3:10 P.M.

THE COURT: Call the calendar.

THE CLERK: No. 15 on calendar. Civil No. 77-521-HP, Pacific Legal Foundation, et cetera, et al., vs. John R. Quarles, Jr., et cetera, et al.

Your Honor, this matter is on the Court's calendar this afternoon for hearing plaintiffs' application for preliminary injunction. That application was filed on March 29, 1977.

Counsel will please state their appearance for the record.

MR. HOOKANO: Thomas Hookano for plaintiffs.

MR. BEST: Robert Best for plaintiffs.

MR. FREEMAN: Roger Freeman for plaintiff City of Torrance.

MR. TRILLING: Good afternoon, your Honor. For the federal defendants, Assistant United States Attorney Barry Trilling; and Environmental Protection Agency, Anthony Garvin.

MR. STIPANOVICH: For the State defendants, Emil Stipanovich, Jr., Deputy Attorney General.

THE COURT: Very well.

Mr. Best, do you want to address these questions, or Mr. Hookano?

MR. BEST: Mr. Hookano will, your Honor.

[4] THE COURT: All right. Fine.

MR. HOOKANO: Your Honor, would you like the questions read into the record?

THE COURT: Well, I will give the clerk a copy of the questions for the Government and questions for the plaintiffs, and I will ask him to insert those questions in the record at this point as though they had been read in full, so that will obviate the need to read those questions into the record.

> (Question No. 4 from the list entitled "Questions for Plaintiffs," which was handed to the reporter appears in the following words and figures, to wit:"

"Even if an EIS is required for the EPA's funding of the Hyperion project, why should a remedy on that cause of action include an injunction against enforcement of Hyperion's permit? Under the Act, isn't enforcement of pollution standards in permits independent from and not contingent upon the availability of federal funding?

"If the permit was held up pending an EIS as to the grant, wouldn't the court be overruling the Water Act's exemption from NEPA for permits and effluent limitations?

"Even if it seems anomalous to require an [5] EIS pending federal funding of a project while leaving the EPA free to enforce orders requiring the project's completion without federal funds, doesn't that result stem from the plain meaning of Section 511?")

MR. HOOKANO: The question, now, in summary form is, why should a remedy on plaintiffs' cause of action which relates to the request for an injunction pending completion of an EIS on the funding of the conversion of the Hyperion project, why should this injunction if issued act against enforcement of the Hyperion permit.

I think the response to that question first calls for an understanding of the project that we are seeking to enjoin. That project is the physical conversion of the Hyperion plant to faciliate interim sludge processing.

That project also consists of the federal and state defendants' requirement that that project take place.

THE COURT: Why don't you just take the questions and answer them, without paraphrasing them. I think it would be more manageable that way.

Question 4, do you have that in mind?

MR. HOOKANO: Yes.

THE COURT: Why don't you answer that?

MR. HOOKANO: The response is that we are not challenging the permit issued for the Hyperion plant. We are [6] challenging the conversion project. We are not seeking to upset the effluent limitations or any of the water quality standards set for operation of that plant.

So the injunction would go towards the implementation of the requirements—

THE COURT: One of the questions there is this:

"Under the Act, isn't enforcement of pollution standards in permits independent from and not contingent upon the availability of federal funding?"

MR. HOOKANO: The answer to that question is, Yes.

THE COURT: All right.

MR. HOOKANO: But that is not what we are seeking here.

THE COURT: What I am seeking is your answers to the questions.

MR. HOOKANO: The answer to that question is, Yes.

THE COURT: All right.

Why don't you answer the question that precedes that one?

MR. HOOKANO: Again, your Honor, we are not seeking an injunction on the permit itself. We are seeking an injunction as to the conversion of the plant, and that plant conversion is a physical project; it is not an injunction relating to water quality standards or the effluent limitations contained in the permit.

That's about as simply as I could state it.

[7] We are talking about the physical conversion of that plant, and the implementation of capital expenditures to install centrifuges, to purchase trucks, and the related activity. That is the project. It is not an injunction going towards enjoining the provisions in the permit setting forth quality standards.

THE COURT: You are not seeking an injunction against enforcement of Hyperion's permit?

MR. HOOKANO: No, we are not.

THE COURT: All right.

Earlier when I referred to the clerk, I meant the court reporter.

We have been dealing now with Question 4.

MR. HOOKANO: May I qualify my answer regarding the permit?

THE COURT: Yes.

MR. HOOKANO: There is something I wanted to add.

One thing is that it may be the conversion project is deemed a portion of the NPDS permit.

Insofar as we are seeking an injunction, we are not seeking an injunction as to the water quality standards or the effluent limitations.

If the conversion project is a part of the permit, then we are seeking to enjoin that portion of the permit, but only that portion of the permit.

[8] THE COURT: Why don't you answer the next question of 4?

MR. HOOKANO: Your Honor, the no-project alternative would vary in different locations, and, again, would not be a prohibition on implementation of the uniform secondary treatment standards.

I think I might give an example. There are several ways that the federal defendants could apply a uniform secondary treatment standard, but yet the no-project alternative, or variation of no-project alternative—

THE COURT: Wait a second. I am going to have to read these into the record, because I can't direct your attention to the questions that I want answered.

I am looking at the question now that reads—this is part of 4:

"If the permit was held up pending an EIS as to the grant, wouldn't the court be overruling the Water Act's exemption from NEPA for permits and effulent limitations?"

That's the next question you are to answer.

MR. HOOKANO: I don't believe it would, your Honor, because it is contemplated that for funding projects that there would be a NEPA statement, and that is integrated into the Act.

It was conceived, I believe, by Congress, that when [9] there would be funding of a particular project to implement the standards contained in the permit, that there would be a NEPA statement. The two could be harmonized; the two actions could be harmonized.

THE COURT: The next question which is part of 4 reads:

"Even if it seems anomalous to require an EIS pending federal funding of a project while leaving the EPA free to enforce orders requiring the project's completion without federal funds, dosen't that result stem from the plain meaning of Section 511?"

MR. HOOKANO: Again, your Honor, I am not sure that that result is required by the Act, by the Water Act. If the EPA is going to issue funds for a particular implementation project, then I think it is contemplated that an EIS would be prepared for that project, and that would not—that would be more consistent with carrying out the meaning of Section 511.

THE COURT: Go to 5 and just answer the first part of 5.

(Question No. 5 from the list entitled "Questions for Plaintiffs," which was handed to the reporter, appears in the following words and figures, to wit: "If everytime an EIS were done on proposed [10] funding for a sewage plant project, that EIS had to include all alternatives including 'no project,' then wouldn't every EIS have to reevaluate the EPA's definition of secondary treatment according to the needs of the particular locale of the sewage treatment plant? Wouldn't that destroy the concept of a uniform secondary treatment requirement for sewage treatment plants?")

MR. HOOKANO: That may be possible, your Honor. In the Hyperion situation where a uniform secondary treatment standard is being applied, the no-project alternative may include, for example, extension of the outfalls in the ocean. It may include examination of various disposal methods related to ocean disposal.

THE COURT: Then the final part of Question 3.

MR. HOOKANO: Again, the answer would be in the negative, because the uniform secondary treatment standards of effluent limitations could be established, but the manner of disposal could be determined—could be different at different locations.

THE COURT: Why don't you address yourself now to Question 6.

(Question No. 6 from the list entitled "Questions for Plaintiffs," which was [11] handed to the reporter, appears in the following words and figures, to wit:

"Even if the court were to accept plaintiffs' argument that the EPA has incorrectly sought to regulate the disposal of sludge from ocean outfalls under Section 301, when such regulation should proceed under Section 403, doesn't the Water Act, under Section 403, still give the EPA power to regulate the discharge of pollutants from ocean outfalls? And the EPA could, under Section 403, determine that sludge should not be disposed of in the ocean? So, if the EPA has the power under the Water Act to prohibit the disposal of sludge in the ocean, isn't a policy to that effect, even if arrived at under the incorrect section and through incorrect procedures, still a policy arrived at 'pursuant to' the Water Act, within the meaning of Section 511(c)(1)?")

MR. HOOKANO: The answer to the first part of Question 6 is, yes.

The answer to the second part of Question 6 is also, Yes.

The answer to the third part of Question 6 is we don't know what the origins of that policy are. We are not certain whether or not they come from the Water Act, and [12] therefore, within the provisions of Section 511(c).

I think that is a factual matter to be determined.

THE COURT: All right. Fine. I will hear from Mr. Garvin.

Why don't you address yourself to Question 6, as well, Mr. Garvin.

MR. GARVIN: Your Honor, regarding Question No. 1, the citation for the guidelines under Section—

THE COURT: Let's go to the one we just finished off, 6. These are plaintiffs' questions.

MR. GARVIN: Well, your Honor, the Act does give EPA the authority to regulate discharges of sludge or any pollutants from ocean outfalls.

THE COURT: You are referring now to Section 403?

MR. GARVIN: Yes.

THE COURT: All right.

MR. GARVIN: And, also, your Honor, to Section 301(a) of the Act, the principal section of the Act, which states that the discharge of a pollutant from any point source is illegal in the absence of compliance with various sections of the Act. That requires compliance with Section 301(b)(1)(b), which requires secondary treatment by publicly-owned treatment plants. And also to Section 402, which requires a permit to be issued, or that the discharger have a permit in order to continue discharge.

[13] Section 402 requires compliance with several sections of the Act. One of those is Section 403. And EPA could under Section 403 determine that sludge should not be disposed of in the ocean.

THE COURT: The last part of Question 6?

MR. GARVIN: Well, I suppose the answer is, Yes, your Honor. However, the definition of pollutant within Section, I think it is 502 of the Act, specifically includes sewage sludge as one of the pollutants which are regulated under the Act. So it is not really a generalized power or authority to regulate the discharge of sludge.

But the Act's definition of pollutant specifically indicates that the discharge of sludge is a pollutant which must be regulated.

THE COURT: That's 502?

MR. GARVIN: Excuse me. I will give you the exact section. 502(6). The term pollutant means dredge, spoils, solid waste, incinerator residue, sewage garbage, sewage sludge, et cetera.

THE COURT: Are you saying, then, that 502(6) is a source of the policy prohibiting disposal of sludge in the ocean?

MR. GARVIN: Not exactly, your Honor.

THE COURT: What is the source of the policy?

MR. GARVIN: The source of the policy is derived [14] from the secondary treatment requirements.

THE COURT: 301?

MR. GARVIN: 301(b)(1)(b).

Your Honor, it might be helpful in answering that question if I could go to your Question 2.

THE COURT: Well, do you want to answer 1, then? Start in on that.

MR. GARVIN: Okay.

(Question No. 1 from the list entitled "Questions for Government," which was handed to the reporter, appears in the following words and figures, to wit:

"What is the citation for the guidelines that the EPA is required to promulgate under Section 403?")

MR. GARVIN: The citation to the guidelines promulgated by EPA under Section 403 is 40 C.F.R. Part 227.

I am sorry I don't have the Federal Register citation at the moment.

THE COURT: You will get that and leave it with the clerk?

MR. GARVIN: Yes, your Honor.

THE COURT: All right.

(Question No. 2 from the list entitled "Questions for Government," which was [15] handed to the reporter, appears in the following words and figures, to wit: "When the EPA adopted its definition of secondary treatment in 1973, was it understood that the scope of the definition included a prohibition against disposal of sludge into the receiving waters of sewage treatment plants? If so, why wasn't the disposal of sludge dealt with in Hyperion's first NPDES permit? Isn't sludge usually considered a by-product of secondary treatment? If Congress intended to include sludge in Section 301, why did it enact section 405?")

MR. GARVIN: Under Question 2, EPA's definition of secondary treatment, or when EPA adopted its definition of secondary treatment, it was understood that the definition included the disposal of sludge. Sludge is nothing more than concentrated, suspended solids from the effluent stream of a discharge from a treatment plant.

Suspended solids can be any kind of organic matter. They can be cigarette butts or marbles, anything like that is considered to be a suspended solid.

When EPA promulgated—proposed and then promulgated its secondary treatment requirements, it established in those regulations limitations upon the amounts of suspended [16] solids that could be discharged.

Now, no definition or no distinction was made between suspended solids as they came to the sewage treatment plant in a dilute mass, or no distinction was made between suspended solids in that form and suspended solids after they have been taken out of the waste stream and concentrated into more compact matter, which we are referring to as sewage sludge.

When EPA issued those regulations I don't think it was contemplated that a municipality would seek to remove the total suspended solids in order to comply with the secondary treatment requirements, and then put them right back into the same—well, or into a different pipe into the same receiving waters.

Perhaps EPA should have thought of all possibilities, but that seemed—I imagine to those who established the regulations that seemed just a bit beyond what could be expected.

THE COURT: In other words, what you are saying is, what's the point in putting water that has gone through a secondary treatment process into the ocean, if you follow that up with the disposal of the sludge that was removed from the water?

MR. GARVIN: Exactly. The requirements establish a limitation on volume or amount of suspended solids that can [17] be discharged from the effluent stream; that the municipality must remove a certain volume of the total suspended solids.

It simply doesn't make sense to have a municipality meet the requirements for secondary treatment by removing these total suspended solids and then allow them to put it back in through a different pipe. That doesn't make any economic sense, or any environmental sense.

Now to your question why wasn't the disposal sludge dealt with in Hyperion's first NPDES permit.

To my understanding there are three outfall pipes from the Hyperion plant. One is labeled 001, and that is the one-mile outfall which is used in emergencies.

Then there is the five-mile outfall, which is 002, and that is the one used to discharge the effluent.

Then there is discharge No. 003, which is the seven-mile outfall.

When the permit was initially issued in 1974, no requirements were established for 003, that particular discharge. I think it was merely on oversight. I don't know, frankly, why that outfall was not covered.

However, I don't think—

THE COURT: It is kind of a big oversight.

MR. GARVIN: There are probably about 50,000 permits that are being issued throughout the country to various facilities, some of them more complex than this. If there [18] weren't some oversights I would be surprised. But exactly why it was left out in the initial permit I don't know.

The important point, though, is that it was included and effluent limitations were established for it in the amended permit, which was issued in August of 1975.

Now, before a permit is actually issued a draft permit is developed. The permittee is given a copy of it, notice of the permit's proposed issuance is published in the papers of general circulation, and the public and the permittee are given a 30-day period in which to comment before an informal public hearing is held. Then an informal public hearing is held, and EPA then issues the permit. And then after that EPA's regulations allow any interested party an opportunity to request an adjudicatory hearing to challenge the terms of the permit.

Although EPA may have been or was in error in not issuing it, effluent limitations for discharge 003 in 1974, if there was anything improper about them doing so in 1975, the public, and the City of Los Angeles, the permittee, had ample opportunity to contest the establishment of limitations for discharge 003. Yet no such challenge was ever made.

THE COURT: What about the next part of Question 2?

MR. GARVIN: Sludge is normally—well, is in essence a by-product of secondary treatment, because it is merely the concentration of the total suspended solids which [19] are in the effluent stream.

THE COURT: What about the last part of Question 2?

MR. GARVIN: Well, 405 covers the disposal of sewage sludge to navigable waters or the waters of the territorial sea, regardless of from what type or outfall or how it arrives in the sea.

It is important—one of these types of disposal that is covered by Section 405 is the dumping from barges.

Now, in this point—and this is really the primary purpose, I think, of Section 405, to cover discharge from vessels, because the Marine Protection and Sanctuaries Act of 1972 was adopted and passed the same year as the Federal Water Pollution Control Act, and that Act required a permit for any municipality or any person wishing to discharge any material, including sewage sludge, beyond the three-mile limit. However, it did not regulate dumping within the three-mile limit.

Section 405 should be viewed in that context as extending or in enacting a permit program for the discharge or disposal of sludge from vessels into areas within the three-mile limit, and not as a provision which totally—which is the only mechanism of regulating the discharge of sludge into the ocean.

You see, when the Marine Sanctuaries Act was adopted, that Act or bill was in a different committee or committees [20] than was the Federal Water Pollution Control Act. The jurisdiction of the committees were separate and distinct. The jurisdiction of the committees having control or debating the Marine Protection and Sanctuaries Act was beyond the three-mile limit, and the committee considering and adopting the Federal Water Pollution Control Act, their jurisdiction extended only within the three-mile limit. And this was a compromise worked out between them.

THE COURT: But a treatment plant on shore with an outfall beyond the three-mile limit, was that problem specifically addressed by either committee?

MR. GARVIN: Your Honor, I think it was. And I think we have citations to it in our brief. I may be wrong there. I have seen some discussion of that, though, in the legislative history discussing a compromise that was worked out.

The most important thing, now that I recall, is the definition of the term "dumping" under the Marine Sanctuaries and Protection Act specifically excludes the discharge of pollutants from ocean outfalls. So under the Marine Act—the Marine Act establishes procedures whereby anyone who wishes to dump must obtain a permit from EPA under the Act. So the definition of the term "dumping" specifically excluded the discharge of pollutants from ocean outfalls, meaning a pipe. And that is discussed in our memorandum in opposition to the motion for preliminary injunction. As [21] establishing a clear congressional intention that the discharge through ocean outfalls should be regulated under the Federal Water Pollution Control Act and not under the Marine Protection and Sanctuaries Act.

THE COURT: What about Question 3?

(Question No. 3 from the list entitled "Questions for Government," which was handed to the reporter, appears in the following words and figures, to wit: "Do you think Cingress intended that the EPA require a municipality to go ahead with a sewage treatment project when the EPA had not yet finished its EIS for the funding of the project? Doesn't that make the EIS an academic exercise?")

MR. GARVIN: When the Federal Water Pollution Control Act was adopted in December of 1972, it established a July 1, 1977 date for communities to meet the requirements of secondary treatment. So that was approximately four and a half years in the future from the time that the Act was adopted.

I think Congress anticipated that communities would, rather than challenging the basic requirements of the Act, would seek to implement them. And with that understanding I think they could justifiably have felt that the environmental impact statement process would have

gone on in an orderly [22] manner before the compliance date of July 1, '77 arrived.

However, in the case of Los Angeles the City has not taken rapid action to implement either the secondary treatment requirements or the sludge removal requirements of its permit, so here we are faced—this is May 23, 1977—and the Act establishes a July 1, 1977 compliance date.

I think if it appears inconsistent, I think it is just the crunch of time has fallen upon everyone, all of the actors in this drama, in that the Act establishes an absolute date for compliance.

The City is nowhere near ready to implement that compliance date. And if that means that enforcement must occur before the EIS is issued regarding funding, then that appears to be the result.

However, one thing should be stressed. That a municipality or any dischargers—well, any municipality's duty to comply with the Federal Water Pollution Control Act is independent of the decision of EPA whether or not to award grant funds.

I think the problem was discussed in depth by the district court in the Eastern District of Virginia in State Water Resources Board v. Train, which is 424 F.Supp. 146, that is in 1976, discussed the problem and pointed out that Congress had to be aware, when it adopted the Act and was aware that there weren't sufficient grant funds available for [23] all communities to meet the requirements of Section 301(b)(1)(b).

The court in State Water Resources Control Board v. Train held that communities' or municipalities' obligation to comply with those requirements were independent of the availability of federal funds.

The preparation of an EIS is merely to determine whether EPA should participate in the project; not whether the project should go forward. If the project is required in order to comply with the terms of the Act.

THE COURT: Anything else?

MR. GARVIN: Your Honor, I would just like to point out that the plaintiffs stated that they were not

challenging the terms of the permit. However, they then amended their response to say that they would be challenging the terms of the permit which require—or to the extent it requires an interim sludge project.

The permit or the effluent limitations in the permit include the compliance schedules established in the permit. This is clear from a specific reading of the definition of the term "effluent limitation" in Section 502(11) of the Act.

So when the plaintiffs state that they are challenging the requirement that an interim sludge project go forward, they are challenging a compliance schedule which is an effluent limitation of a permit. And that can only be challenged in the Court of Appeals.

[24] Thank you.

THE COURT: Does anyone else wish to be heard?

Anything further?

MR. BEST: Could we add a couple of comments, your Honor?

THE COURT: Sure, sure.

MR. BEST: I would like to point out that it is our understanding that there are no regulations in effect implementing the provisions in defendants' Question No. 1; that these were repealed recently with the adoption of the new ocean-dumping criteria. And I hope that that will be cleared up by the defendants in this case that as of now under Section 403 there are no guidelines in effect.

MR. GARVIN: Your Honor, the guidelines under Part 227 were repealed with respect to the ocean-dumping requirements under the Marine Sanctuary and Protection Act. However, the guidelines under Part 227 still apply, to my knowledge, to the compliance with Section 403.

The agency is in the process of developing revised guidelines specifically for Section 403.

THE COURT: Why don't you check that out and shoot me a note tomorrow on it?

MR. BEST: Our understanding is in the exact opposite.

I want to just mention a couple of points in what the [25] defendants have mentioned today.

First of all, I would like to point out that although they claim that 405 did not apply to the Hyperion plant, they have stated that a 405 permit has been issued for the sludge outfall of the Hyperion plant. So it would seem that EPA has in fact considered that 405 would be applicable in this instance.

Also, I believe that it is important to recognize that to the best of our knowledge the City is not in violation of the permits which have been issued. And that's a point that we want to urge by way of saying that the permits, the effluent limitations, and the requirements that have been placed on the outfalls are at present being met. And the statement that the City had a duty to comply with these requirements separate from grant funds and implementation of the project we think again reinforces the fact that an injunction against the project and the grant funds does not interfere with the enforcement or the standards, the uniform nationwide requirements that are put into the act.

I think maybe it should be recognized also that the permit we are dealing with here actually expired in January of this year and was extended by a summary action of the state board and the EPA only through June of this year, and the permit itself, I believe, is scheduled to expire in June.

[26] Is that incorrect?

MR. STIPANOVICH: Yes. The Regional Board this morning extended that, your Honor, to 1979.

MR. BEST: They have again extended without notice?

MR. STIPANOVICH: There was a full public hearing this morning.

MR. BEST: It has been extended until when?

MR. STIPANOVICH: I believe it is September 17, 1979.

MR. BEST: The last point. I think perhaps the federal defendants have cleared up some of the confusion by pointing out that it was perhaps never contemplated that

a situation such as Hyperion would arise under the Federal Water Pollution Control Act; that a circumstance would arise where it would make sense to put the sludge back in the water under separate conditions, because of the impacts that would result under the localized condition.

I think that recognized again that Section 301 and the requirements in the Act were not built around the inclusion of prohibitions against sludge.

THE COURT: What's the point of going through secondary treatment if the by-product of that treatment is then put into the ocean?

MR. BEST: There is some question as to whether there is any point going through secondary treatment, I will agree to that, your Honor. I think as to whether it makes any [27] sense to separate out the solids and put those in the ocean in a different place in a different manner than to leave them suspended in the effluent and put them all in the same place together, there are some good reasons for doing that; one of them being the resource recovery that occurs in that process, and another one being that the impacts on the water are considerably different. In other words, if you make these discharges in a different manner at a different location, at a different depth, and so forth, that it does modify and change the impact.

I think this is evidenced by the fact that Santa Monica Bay was considered to be contaminated when all of the products were dumped together out in the original outfall in the inshore waters. By separating them out and applying a different technology and putting the sludge out into the—

THE COURT: Is that what used to be the one-mile outfall?

MR. BEST: That is correct.

By separating these out into different locations and different manners of putting them in the water there was substantially less impact on the ocean.

So I think it can be established that it is not unreasonable to have a different method of doing it and to split

off the products and to discharge these products in another way.

[28] THE COURT: Does anyone else have anything to say?

(No response.)

THE COURT: The matter will stand submitted.
You will get that information?

MR. GARVIN: Yes, your Honor.

(Whereupon at 3:55 p.m. an adjournment was taken.)

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

No. 77-0521-HP

PACIFIC LEGAL FOUNDATION, ET AL., PLAINTIFFS

vs.

JOHN R. QUARLES, JR., ET AL., DEFENDANTS

REPORTER'S CERTIFICATE

I hereby certify that I am a duly appointed, qualified and acting official court reporter for the United States District Court, Central District of California.

I further certify that the foregoing 28 pages comprise a true and correct transcript of the proceedings had in the above-entitled cause on the dates specified therein, and that said transcript is a true and correct transcription of my stenographic notes.

/s/ [Illegible]
Official Reporter

Dated at Los Angeles, California, this 28th day of December, 1977.

ENVIRONMENTAL PROTECTION AGENCY
REGION IX
101 California Street
San Francisco CA 94111

In reply refer to:
E-4-1 869.2D

June 2, 1977

Mr. Warren A. Hollier, President
Board of Public Works
200 N. Spring Street, Room 353
Los Angeles, Ca. 90012

Dear Mr. Hollier:

In accordance with the Federal Water Pollution Control Act (33 U.S.C. 1251 et. seq.), the Environmental Protection Agency issued the following National Pollutant Discharge Elimination System (NPDES) permit to:

City of Los Angeles: Hyperion Treatment Plant
NPDES Permit No. CA0109991

A tentative determination has been formulated to extend the expiration date of the permit. This agency recently published a public notice of this tentative determination. After consideration of the expressed views of all interested persons and agencies, pertinent Federal statutes and regulations, and State action regarding certification of the discharge as affected by the determination, the Regional Administrator has made his final determination. This final determination does not constitute a significant change from the tentative determination set forth in the public notice.

The expiration date of this permit is hereby extended from June 30, 1977 to December 17, 1979.

For the Regional Administrator,

Original Signed By: Terry L. Stumph
For R. L. O'Connell
Director, Enforcement Division

cc: California RWQCB—Los Angeles, Central Coast
U.S. Fish and Wildlife Service, Laguna Niguel
Corps of Engineers, Los Angeles
11th Coast Guard District
National Marine Fisheries Service, Terminal Island, Ca.

bc: E-5-1
S-2-1

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD—LOS ANGELES REGION
South Broadway, Suite 4027
Los Angeles, California 90012
(213) 620-4460

June 2, 1977

City of Los Angeles
Bureau of Engineering
Room 800, City Hall
Los Angeles, California 90012

ATTENTION: Mr. Donald C. Tillman
City Engineer

RE: Waste Discharge Requirements (NPDES Permit No. CA0109991)—Hyperion Treatment Plant

Gentlemen:

Reference is made to our letter dated May 2, 1977, which transmitted a draft of a tentative Order extending the expiration date of the waste discharge requirements for the Hyperion Treatment Plant.

Pursuant to Division 7 of the Water Code of the State of California, this California Regional Water Quality Control Board, at a public hearing held on May 23, 1977, reviewed the tentative Order, considered all factors in the case, and adopted Order No. 77-84 (copy attached). This Order serves as a part of a permit under the National Pollutant Discharge Elimination System, and expires December 17, 1979. Please note that you must file an application for a new permit at least 180 days in advance of that date.

Your current Monitoring and Reporting Program remains in effect. Please reference all technical and monitoring reports to our Compliance File No. 1492.

Very truly yours,

Original signed by

Raymond M. Hertel
RAYMOND M. HERTEL
Executive Officer

cc: See attached mailing list

Enclosures

cc: Regional Board Members
Environmental Protection Agency, Region IX
Regional Administrator, ATTN: Enforcement Division & Permits Branch
United States Army Corps of Engineers
State Water Resources Control Board, Legal Division
ATTN: Mr. H. M. Schueller
Department of Fish and Game, Marine Resources Region
Department of Health, Water Sanitation Section
Department of Water Resources
Department of Parks and Recreation
Department of Navigation and Ocean Development
State Lands Division
City of Los Angeles, City Council
City of Los Angeles, City Engineer
City of Los Angeles, Bureau of Engineering
City of Los Angeles, Bureau of Sanitation
City of Los Angeles, Wastewater Systems Engineering Division
County of Los Angeles,
Department of Health Services
Los Angeles County Department of Parks and Recreation
Los Angeles County Engineer, Project Planning and Pollution Control Division

Los Angeles County Engineer, Sanitation Division
County Sanitation Districts of Los Angeles County
City of Santa Monica
City of El Segundo
City of Manhattan Beach
City of Hermosa Beach
City of Redondo Beach
City of Torrance
Malibu Township Council
U.S. Naval Station, Long Beach
Ocean Fish Protective Association
Izaak Walton League of America
NOAA, National Marine Fisheries Service
U.S. Fish and Wildlife Service
Division of River Basin Studies
11th District U.S. Coast Guard, Long Beach
Environmental Protection Agency, Region XI, Contact Office
U.S. Fish and Wildlife Service, ATTN: Regional Director
Mr. A. F. Peppermuller
Mr. Louis Fiske
Regional Wastewater Solids Management Program
Los Angeles-Orange County Metropolitan Area
California Regional Water Quality Control Board, Santa Ana Region
California Regional Water Quality Control Board, Central Coast Region
State Water Resources Control Board, Division of Water Quality ATTN: Mr. Dennis Anctil

State of California
Resource Agency

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD,
LOS ANGELES REGION

Order No. 77-84

NPDES No. CA0109991

WASTE DISCHARGE REQUIREMENTS
FOR
CITY OF LOS ANGELES
HYPERION TREATMENT PLANT

The California Regional Water Quality Control Board, Los Angeles Region, finds:

1. City of Los Angeles discharges treated municipal wastewater and sewage sludge to Santa Monica Bay from its Hyperion Treatment Plant in Playa del Rey under requirements prescribed jointly on August 18, 1975, by this Board and the United States Environmental Protection Agency in Order No. 75-100 (NPDES Permit No. CA0109991). Order No. 75-100 has been amended by Order Nos. 75-65 and 77-1 adopted December 1, 1975, and January 24, 1977, respectively. Order No. 75-100 expires on June 30, 1977.

2. City of Los Angeles has filed a report of waste discharge and applied for renewal of its waste discharge requirements and National Pollutant Discharge Elimination System Permit prior to the expiration of the current requirements and Permit.

3. The Environmental Protection Agency is administratively modifying the expiration date of the NPDES Permit to extend the permit to the full five-year statutory length as provided in the Federal Water Pollution Control Act and has requested

that Order No. 75-100 be extended for the same period.

4. The City of Los Angeles has prepared a final environmental impact report in accordance with the California Environmental Quality Act (Public Resources Code Section 21000 et. seq.).

5. The City of Los Angeles has changed or altered the project as follows:

   a. Discharge of chlorinated secondary effluent out the 1-mile outfall during installation of the eductor-construction schedule has been arranged so that there should be no interruption of beach usage.

   b. Discharge of primary effluent during construction of secondary facilities—construction activities have been timed so that primary effluent will be discharged through the 5-miles outfall instead of the 1-mile outfall.

   c. Cessation of sludge discharge to ocean-landfills utilized will have a shortened useful life—however, no other alternative is currently available. The problem is being studied by the State Water Resources Control Board and the Los Angeles/Orange Metropolitan Area Study Group.

6. The changes or alternatives in the project mitigate or avoid the significant or lasting adverse environmental impacts of the project.

The Board has notified the discharger and interested agencies and persons of its intent to amend waste discharge requirements for this discharge and has provided them with an opportunity to submit their written views and recommendations.

The Board in a public hearing heard and considered all comments pertaining to the tentative Order.

This Order shall serve as part of a National Pollutant Discharge Elimination System permit pursuant to Section 402 of the Federal Water Pollution Control Act, or

amendments thereto, and shall take effect at the end of ten days from the date of its adoption, provided the Regional Administrator, EPA, has no objections.

IT IS HEREBY ORDERED, that Order No. 75-100 adopted by this Board on August 18, 1975, shall be revised as follows:

1. The expiration date in Provision F-5 is changed from June 30, 1977, to December 17, 1979.
2. All other limitations, prohibitions, requirements, and provisions of Order No. 75-100 shall remain in full force and effect.
3. Order No. 77-1 adopted on January 24, 1977, is hereby rescinded.

I, Raymond M. Hertel, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Control Board, Los Angeles Region, on May 23, 1977.

/s/ Raymond M. Hertel
RAYMOND M. HERTEL,
Executive Officer

June 10, 1977

Mr. William H. Pierce, Chief
Permits Branch Enforcement Division
United States Environmental
Protection Agency
100 California Street
San Francisco, CA 94111

Dear Mr. Pierce:

In re: Hyperion Treatment Plant, Los Angeles, California, Interim Sludge Processing and Disposal System Extension of Expiration Date for NPDES Permit No. CA0109991, Reference: E-4-1 869.2D

This is a request pursuant to the Freedom of Information Act, as amended, 5 U.S.C. § 552.

We have attempted through telephone conversations with Environmental Protection Agency Region IX offices to find out whether the extension has been approved and, if so, on what date. Thus far, we have not been given a response.

In accord with the provisions of the Freedom of Information Act, please furnish us with the following:

1. The date of issuance of the Environmental Protection Agency extension of the expiration date to December 17, 1979, of NPDES Permit No. CA0109991.
2. The official document of the Environmental Protection Agency which establishes the extended expiration date of the permit.
3. All supporting documents and materials which form the basis for the decision to extend the expiration date of NPDES Permit No. CA0109991 from June 30, 1977, to December 17, 1979.

Pacific Legal Foundation is a nonprofit, tax-exempt law firm serving the public interest. We therefore request that in accordance with the provisions of the Freedom of

Information Act any fees be waived, as the information is requested primarily to benefit the public.

Very truly yours,

/s/ David M. Shell
DAVID M. SHELL
Law Clerk

DMS:bg

[Receipt Omitted in Printing]

June 13, 1977

PMS PAUL DEFALCO JR REGIONAL DIRECTOR
REGION IX UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, RDM REPORT DELIVERY
BY MAILGRAM, DLR
100 CALIFORNIA ST
SAN FRANCISCO CA 94111

REQUEST FOR AN ADJUDICATORY HEARING
PURSUANT TO 40 CFR SECTION 125.36

1. NAME AND ADDRESS OF REQUESTOR

JOHN B KILROY SR
870 STRADA VECCHIA
LOS ANGELES CA 90024

2. INTERESTS OF REQUESTOR

MR KILROY AS A RESIDENT OF LOS ANGELES IS DIRECTLY AFFECTED BY ANY PROPOSAL SIGNIFICANTLY AFFECTING THE OPERATION OF THE HYPERION TREATMENT PLANT AND THE ENVIRONMENT OF THE LOS ANGELES AREA

3. PARTICIPATION BY REQUESTOR

REQUESTOR AGREES TO COMPLY WITH THE TERMS OF 40 CFR SECTION 125.36(B)(2)(IV)

4. REASONS FOR THE REQUEST

REQUESTOR ASKS THAT THE DECISION OF EPA TO EXTEND THE EXPIRATION OF NPDES PERMIT CA010991 BE SET ASIDE FOR THE FOLLOWING REASONS:

1. THE 30 DAY NOTICE PRIOR TO HEARING (SECTION 125.32(A)) AND THE 30 DAY PERIOD FOR PUBLIC INPUT MANDATED BY 40 CFR SECTION 125.32(B)(1) WERE NOT COMPLIED

WITH THEREFORE DENYING REQUESTOR AN OPPORTUNITY TO BE HEARD.

2. THE PROCEDURES FOR ISSUANCE OF AN NPDES PERMIT PURSUANT TO 40 CFR SECTION 125.2 ET SEQ. WERE NOT FOLLOWED, THERE ARE NO PROVISIONS IN THE REGULATIONS FOR THE EXTENSION OF THE EXPIRATION OF AN NPDES PERMIT.

5. ISSUES TO BE RAISED

REQUESTOR WOULD RAISE THE FOLLOWING ISSUES:

1. WHETHER THE REQUIREMENTS OF THE PERMIT SHOULD BE MODIFIED IN THAT THE PROJECT THAT IS THE SUBJECT OF THE COMPLIANCE SCHEDULE SET FORTH IN NPDES PERMIT CA010991 IS BEING EVALUATED IN AN EIS BY THE EPA PURSUANT TO THE REQUIREMENTS OF NEPA, THE COMPLIANCE SCHEDULE SHOULD NOT BE MANDATED IN AN NPDES PERMIT UNTIL THE NEPA STUDY IS COMPLETED; AND

2. WHETHER THE PROCEDURES USED AND THE RECORD DEVELOPED WERE ADEQUATE ISSUANCE OF AN NPDES PERMIT.

REQUESTOR WOULD PROPOSE TO SET ASIDE THE ACTION TAKEN TO EXTEND THE EXPIRATION DATE OF NPDES PERMIT CA0109991 AND PROVIDE FOR FULL ADMINISTRATIVE PROCEDURES REQUIRED FOR THE ISSUANCE OF AN NPDES PERMIT.

DONALD M PACH ATTORNEY FOR JOHN B KILROY SR. PACIFIC LEGAL FOUNDATION 455 CAPITOL MALL SUITE 465 SACRAMENTO CA 95814

MIDDLETOWN, VA. 22645

[SEAL] [SEAL]

WESTERN UNION MAILGRAM

2-068863E164002 06/13/77 ICS IPMRNCZ CSP SACB
1 9164440154 MGM TDRN SACRAMENTO CA 06-13
0804P EST

PACIFIC LEGAL FOUNDATION BG
455 CAPITOL MALL SUITE 465
SACRAMENTO CA 95814

THIS MAILGRAM IS A CONFIRMATION COPY OF THE FOLLOWING MESSAGE:

9164440154 NL TDRN SACRAMENTO CA 11 06-13 0804P EST PMS PAUL DEFALCO JR REGIONAL DIRECTOR REGION IX UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, RDM REPORT DELIVERY BY MAILGRAM, DLR
100 CALIFORNIA ST
SAN FRANCISCO CA 94111

REQUEST FOR AN ADJUDICATORY HEARING PURSUANT TO 40 CFR SECTION 125.36

1. NAME AND ADDRESS OF REQUESTOR

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LOS ANGELES CA 90024

2. INTERESTS OF REQUESTOR

MR KILROY AS A RESIDENT OF LOS ANGELES IS DIRECTLY AFFECTED BY ANY PROPOSAL SIGNIFICANTLY AFFECTING THE OPERATION OF THE HYPERION TREATMENT PLANT AND THE ENVIRONMENT OF THE LOS ANGELES AREA

3. PARTICIPATION BY REQUESTOR

REQUESTOR AGREES TO COMPLY WITH THE TERMS OF 40 CFR SECTION 125.36(B)(2)(IV)

4. REASONS FOR THE REQUEST

REQUESTOR ASKS THAT THE DECISION OF EPA TO EXTEND THE EXPIRATION OF NPDES PERMIT CA0109991 BE SET ASIDE FOR THE FOLLOWING REASONS:

1. THE 30 DAY NOTICE PRIOR TO HEARING (SECTION 125.32(A)) AND THE 30 DAY PERIOD FOR PUBLIC INPUT MANDATED BY 40 CFR SECTION 125.32(B)(1) WERE NOT COMPLIED WITH THEREFORE DENYING REQUESTOR AN OPPORTUNITY TO BE HEARD.
2. THE PROCEDURES FOR ISSUANCE OF AN NPDES PERMIT PURSUANT TO 40 CFR SECTION 125.2 ET SEQ. WERE NOT FOLLOWED. THERE ARE NO PROVISIONS IN THE REGULATIONS FOR THE EXTENSION OF THE EXPIRATION OF AN NPDES PERMIT.

5. ISSUES TO BE RAISED

REQUESTOR WOULD RAISE THE FOLLOWING ISSUES:

1. WHETHER THE REQUIREMENTS OF THE PERMIT SHOULD BE MODIFIED IN THAT THE PROJECT THAT IS THE SUBJECT OF THE COMPLIANCE SCHEDULE SET FORTH IN NPDES PERMIT CA0109991 IS BEING EVALUATED IN AN EIS BY EPA PURSUANT TO THE REQUIREMENTS OF NEPA, THE COMPLIANCE SCHEDULE SHOULD NOT BE MANDATED IN AN NPDES PERMIT UNTIL THE NEPA STUDY IS COMPLETED; AND

2. WHETHER THE PROCEDURES USED AND THE RECORD DEVELOPED WERE ADEQUATE ISSUANCE OF AN NPDES PERMIT.

REQUESTOR WOULD PROPOSE TO SET ASIDE THE ACTION TAKEN TO EXTEND THE EXPRIATION DATE OF NPDES PERMIT CA0109991 AND PROVIDE FOR FULL ADMINISTRATIVE PROCEDURES

REQUIRED FOR THE ISSUANCE OF AN NPDES PERMIT.

DONALD M PATCH ATTORNEY FOR JOHN B KILROY SR, PACIFIC LEGAL FOUNDATION 455 CAPITOL MALL SUITE 465 SACRAMENTO CA 95814

20:04 EST

MGMCOMP MGM

CERTIFICATE OF SERVICE BY MAIL

I, Barbara Gordon, certify as follows:

I am a citizen of the United States, residing or employed in Sacramento, California;

My business address is 455 Capitol Mall, Suite 465, Sacramento, California 95814;

I am over the age of eighteen years, and am not a party to the above entitled action;

On February 10, 1978, two true copies of PETITIONERS' REPLY BRIEF were placed in envelopes addressed to:

JAMES W. MOORMAN
Assistant Attorney General
ANGUS MACBETH
Chief, Pollution Control Section
RAYMOND W. MUSHAL
Attorney, Pollution Control Section
U.S. Department of Justice
Washington, DC 20530

JOAN Z. BERNSTEIN
General Counsel
LISA K. FRIEDMAN
Attorney
U.S. Environmental Protection Agency
401 M Street, S.W.
Washington, DC 20460

ANTHONY O. GARVIN
Acting Regional Counsel, Region IX
U.S. Environmental Protection Agency
215 Fremont Street
San Francisco, CA 94105

STANLEY E. REMELMEYER
City Attorney
City of Torrance
3031 Torrance Boulevard
Torrance, CA 90503

BURT PINES, City Attorney
THOMAS C. BONAVENTURA
Assistant City Attorney, Civil Division
MICHAEL E. WALDORF
FREDERICK MERKIN
Deputy City Attorneys
City of Los Angeles
1700 City Hall East
200 North Main
Los Angeles, CA 90012

RICHARD TERZIAN, Esq.
Burke, Williams & Sorensen
707 Wilshire Boulevard
Los Angeles, CA 90012

which envelopes, with postage thereon fully prepaid, were then sealed and deposited in a mailbox regularly maintained by the United States Postal Service in Sacramento, California.

Executed on February 10, 1978, at Sacramento, California.

/s/ Barbara Gordon
BARBARA GORDON

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IX
100 California Street
San Francisco, California 94111

In Reply
Refer to:

HEA-1 E-2

CERTIFIED MAIL NO. 474683
RETURN RECEIPT REQUESTED

June 23, 1977

Donald M. Pach, Esq.
Pacific Legal Foundation
455 Capitol Mall, Suite 465
Sacramento, CA 95814

Subject: NPDES Permit No. CA0109991—
City of Los Angeles

Dear Mr. Pach:

We are in receipt of your telegram dated June 13, 1977, requesting an adjudicatory hearing on the above subject permit on behalf of John B. Kilroy, Sr.

I have determined that the request does not set forth material issues of fact relevant to the question of whether a permit should be issued or modified, and that the request does not meet the requirements of 40 CFR 125.36 (c) (1) (ii). I therefore deny the request, and my final determination remains in effect. The request does, however, present issues of law relating to interpretations of regulations promulgated under the Federal Water Pollution Control Act which should be referred to the General Counsel for decision pursuant to 40 CFR 125.36 (m) (3). Therefore, I am certifying to the General

Counsel for decision the issues of law raised by your request. A copy of my certification is enclosed.

Sincerely,

Original signed by

R. L. O'Connell
for Paul De Falco, Jr.
Regional Administrator

Enclosure

cc: City of Los Angeles (w/enc.)

bc: State Water Resources Control Board (w/enc.)
Los Angeles Regional Water Quality
Control Board (w/enc.)
Barry S. Shanoff (EN-338) (w/enc.)
Regional Counsel (w/enc.)
E-4 (w/enc.)
E-5 (w/enc.)

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IX

Docket No. IX-WP-77-4

IN THE MATTER OF:

National Pollutant Discharge
Elimination System (NPDES)
Permit No. CA0109991 Issued
to CITY OF LOS ANGELES

CERTIFICATION OF ISSUES OF LAW

A request for an adjudicatory hearing, dated June 13, 1977, was received from Donald M. Pach, on behalf of John B. Kilroy, Sr., that raises the following issues of law which require a decision of the General Counsel pursuant to 40 CFR 125.36(m)(3):

1. Must EPA conduct an informal public hearing prior to taking action to extend the expiration date of an NPDES permit where public notice of the proposed action was published more than 30 days in advance of the action?
2. Must a detailed factual record be developed prior to modification of an NPDES permit where the only modification made to the permit is the extension of the permit's expiration date?
3. May the expiration date of an NPDES permit be extended where a project covered by the compliance schedule of the permit is being evaluated by EPA in an Environmental Impact Statement for the purpose of determining whether a grant should be made to assist in the construction of the project?

Pursuant to 40 CFR 125.36(m)(2), each party may file a brief with the General Counsel within twenty (20) days of the date of this certification. The briefs shall contain:

(1) A subject index of the issues presented in the brief, with page references, and a table of statutes, cases, textbooks, and other material cited, with page references;
(2) A concise statement of each referred issue;
(3) A discussion of each issue, including arguments in favor of the referring party's position and citations to cases, statutes, legislative history, etc., tending to support such positions; and
(4) A recommended decision for each referred issue.

Forwarded herewith is a copy of the record of procedures and action taken in the modification of the subject permit by extending the termination date.

Dated: Jun. 23, 1977

/s/ R. L. O'Connell
for PAUL DEFALCO, JR.
Regional Administrator

I hereby certify that a copy of the foregoing Certification of Issues of Law, addressed to the following, was mailed, Certified Mail, Return Receipt Requested, postage prepaid, in a United States Postal mail box; sent by Pouch Mail of the U.S. Postal Service, or hand-delivered, at San Francisco, California, on the 23rd day of June 1977:

G. William Frick
General Counsel (A-130)
U.S. Environmental Protection Agency
Room W513
401 M Street, S.W.
Washington, D.C. 20460

Donald M. Pach, Esq.
Pacific Legal Foundation
455 Capitol Mall, Suite 465
Sacramento, CA 95814

Certified Mail
No. 474683

Matthew S. Walker
Senior Attorney
Enforcement Division
U.S. Environmental Protection Agency
100 California Street
San Francisco, CA 94111

Dated at San Francisco, California, this 23rd day of June 1977.

/s/ Lorraine Pearson
LORRAINE PEARSON
Regional Hearing Clerk
Region IX

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY
REGION IX
100 CALIFORNIA STREET
SAN FRANCISCO, CALIFORNIA 94111

In Ref To
RIN 77F-50

June 23 1977

Mr. David M. Shell
Pacific Legal Foundation
455 Capitol Mall
Suite 465
Sacramento, CA 95814

Re: Extension of Expiration Date for NDPES Permit for Hyperion Treatment Plant

Dear Mr. Shell:

This letter is in response to your Freedom of Information Act request dated June 10, 1977, to Mr. William Pierce in which you requested copies of documents supporting the extension of the expiration date of the NPDES permit issued to the City of Los Angeles for the Hyperion Treatment Plant. Pursuant to your request, please find enclosed the following documents:

1. Determination of Regional Administrator extending the expiration date of the NPDES Permit No. CA0109991 addressed to Mr. Warren A. Hollier dated June 2, 1977.
2. Undated letter to City of Los Angeles from Raymond M. Hertel.
3. Letter dated July 29, 1976, to Donald Tillman from Stanley Leibowitz.
4. Letter dated August 6, 1976, to Stanley Leibowitz from Donald C. Tillman with attachments.
5. National Pollutant Discharge Elimination System Application for Permit to Discharge Wastewater submitted by the City of Los Angeles dated July 30, 1976.

6. Letter dated September 27, 1976, to Regional Administrator of EPA from Raymond M. Hertel.

7. Joint Order dated January 24, 1977, extending expiration date of NPDES permit and Regional Board permit signed by Raymond M. Hertel and William H. Pierce.

8. Letter dated January 27, 1977, to City of Los Angeles from Raymond M. Hertel.

9. Letter dated April 26, 1977, to Warren A. Hollier from William H. Pierce.

10. Notice of Proposed Action by EPA on modification of the NPDES permit for the Hyperion Treatment Plant dated April 27, 1977.

11. Public voucher for advertising dated May 3, 1977, and advertising order dated April 26, 1977, for publication of public notice in *Los Angeles Times.*

12. Letter dated May 2, 1977, to City of Los Angeles from Raymond M. Hertel with tentative Order attached.

13. Letter dated May 20, 1977, to William H. Pierce from James J. Slawson, U.S. Department of Commerce, National Oceanic and Atmospheric Administration.

14. Letter dated May 26, 1977 to Regional Administrator, EPA from James J. McKevitt, U.S. Department of Interior Fish and Wildlife Service.

15. Letter dated June 2, 1977, to City of Los Angeles from Raymond M. Hertel with Order No. 77-84 attached.

These documents represent all of the materials received by EPA prior to the extension of the expiration date of the NPDES permit for the Hyperion Treatment Plant. The cost of duplication for these documents is being waived in view of the fact that the Pacific Legal Foundation is a public interest law firm.

Sincerely,

David R. Andrews
Regional Counsel

By /s/ Anythony O. Garvin
ANTHONY O. GARVIN
Assistant Regional Counsel

Enclosures
cc: William H. Pierce

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

Docket No. IX-WP-77-4

IN THE MATTER OF
National Pollutant Discharge
Elimination System (NPDES)
Permit No. CA0109991 Issued
To City of Los Angeles

BRIEF OF PACIFIC LEGAL FOUNDATION ON BEHALF OF JOHN B. KILROY ON CERTIFIED QUESTIONS TO GENERAL COUNSEL

[Table of Contents and Authorities Omitted]

INTRODUCTION

The issues of law certified to the General Counsel by the Environmental Protection Agency (EPA) Regional Administrator of Region IX are not an accurate reflection of the issues which would have been raised at the adjudicatory hearing requested pursuant to 40 C.F.R. § 125.36. Requestor of the adjudicatory hearing, John B. Kilroy, proposed to raise two basic issues:

1. Whether there is authority under either the applicable statutes or regulations to extend the expiration date of an existing National Pollutant Discharge Elimination System (NPDES) permit, or whether the action taken by EPA with regard to Permit No. CA0109991 was the issuance of a new permit; and

2. Whether EPA should require that a permittee go forward with a project contained in an NPDES compliance schedule when that project is being studied in an environmental impact statement (EIS) pursuant to the requirements of the National Environmental Policy Act (NEPA), 42 U.S.C. §§ 4332, *et seq.*, and Federal Water

Pollution Control Act (FWPCA, 33 U.S.C. §§ 1281, *et seq.* (See AttachmentA.)

ISSUES PRESENTED

John B. Kilroy (hereinafter requestor) will address, in part, issues two and three certified to the General Counsel. Issue two is as follows:

> "2. Must a detailed factual record be developed prior to modification of an NPDES permit where the only modification made to the permit is the extension of the permit's expiration date"

In issue two, the Regional Administrator makes two assumptions: (1) that the extension of the expiration date of an NPDES permit is authorized, and (2) that it could be construed as a modification. Requestor denies the validity of both assumptions and will present his arguments in I and II below.

Issue three certified to the General Counsel is as follows:

> "3. May the expiration date of an NPDES permit be extended where a project covered by the compliance schedule of the permit is being evaluated by EPA in an Environmental Impact Statement for the purpose of determining whether a grant should be made to assist in the construction of the project?"

For clarity, requestor will divide his discussion of issue three into two parts. First, may the expiration date of an NPDES permit be extended (*i.e.*, without issuing a new permit) and second, should a project which is the subject of an EIS be mandated in a compliance schedule of an NPDES permit which is being newly issued where such schedule would require implementation prior to completion of the NEPA-EIS process? These issues will be addressed in arguments III and IV below.

ARGUMENT

I

EPA HAS NO AUTHORITY TO EXTEND THE EXPIRATION DATE OF AN NPDES PERMIT

Pursuant to 33 U.S.C. § 1342(a)(2), "the [NPDES] permit program of the Administrator . . . shall be subject to the same terms, conditions, and requirements as . . . permits issued . . . under subsection (b) . . . ." Subsection (b) is entitled "State permit programs." The Regional Administrator is subject to the requirements set out in subsection (b) and the regulations adopted pursuant to the applicable statutes.

Title 33, United States Code, § 1342(b)(1)(B) provides that NPDES permits are to be for *fixed* terms not exceeding five years. The regulations adopted pursuant to this authority, as set out in 40 C.F.R. §§ 124.51 [1] and 125.25(c) [2], make it clear that it is the intent of EPA to issue an NPDES permit for a fixed term. The use of "term" in this context is separate and distinct from the use of the word "terms" found in other parts of the applicable statutes and regulations. As used to described the duration of an NPDES permit, "fixed term" is clear and unambiguous. The date of issuance will fix the beginning date and the ending date will fix the expiration date. Upon the expiration of the fixed term, set forth in the permit pursuant to the mandates of 33 U.S.C. § 1342 (b) and 40 C.F.R. §§ 124.51 and 125.25(c), the permit will no longer be in force. To continue to discharge after the expiration date of the fixed term, the permittee must apply for issuance of a new permit.[3]

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[1] 40 C.F.R. § 124.51. "Duration of issued NPDES permits." "Any State or interstate agency participating in the NPDES shall provide that each issued NPDES permit shall have a fixed term not to exceed 5 years."

[2] 40 C.F.R. § 125.25(c). "Duration of permits." "(c) All permits will be for a fixed term."

[3] *See* Attachment B hereto, correspondence from Stanley Leibowitz, Chief, General Services Section, EPA, to Donald Tillman, Los

EPA is bound by both the applicable statutes and regulations. Both the statutes and regulations mandate that an NPDES permit be for a fixed term, which by definition precludes EPA from extending the expiration date of an existing permit. An example would be appropriate to illustrate the abuses which could result if EPA were allowed merely to extend the expiration date of a permit. Suppose that an NPDES permit were issued for a 90 day fixed term. The public would not be too alarmed at such a short duration, and there would probably be no challenge to the pollutants being discharged. If at the end of the 90 day period, EPA extended the expiration date for four years and nine months, which period would not exceed the maximum duration of a permit, then the public could only contest the extension of the permit and not the limitations, restrictions, conditions, and other terms in the permit.[4] It was not the intent of Congress to allow for this type of absurb situation to arise, and yet, if the Regional Administrator's interpretation of his action is allowed to stand it is possible for it to occur. It is recommended that the General Counsel issue a decision that EPA is without authority to extend the expiration date of an existing NPDES permit because of the clear and unambiguous language of the applicable statutes and regulations and the possibility for excessive abuses on the part of EPA.

II

THE ACTION TAKEN BY THE REGIONAL ADMINISTRATOR CANNOT BE CONSTRUED AS A MODIFICATION TO AN ISSUED NPDES PERMIT

In question two[5] certified to the General Counsel, the position taken by the Regional Administrator is that the

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Angeles City Engineer, regarding the expiration of Permit No. CA0109991 and the necessity to obtain a new permit and Donald Tillman's response to that communication.

[4] 40 C.F.R. § 125.36, Adjudicatory Hearings.

[5] "Must a detailed factual record be developed prior to modification of an NPDES permit where the only modification made to the permit is the extention of the permit's expiration date?"

extension of the expiration date of an NPDES permit is a modification of the permit. Incorporating Argument I above, it is contended that the extension of an expiration date cannot be a modification within the framework of the applicable statutes or regulations.

The statutes[6] are definite as to what modifications may be made to an issued NPDES permit. Subpart C (40 C.F.R. §§ 125.21-125.28) of the regulations adopted by EPA sets forth the terms and conditions of an NPDES permit. The regulations allow for modification of effluent limitations (40 C.F.R. § 125.28), treatment standards (40 C.F.R. § 125.28(a)(2)), and schedules of compliance (40 C.F.R. § 125.23(d)), which are the terms and conditions upon which an NPDES permit will be issued for a fixed term. It would be anomalous indeed for the expiration date of a permit to be modifiable in the face of the statutes and regulations which provide for issuance of a new permit upon expiration and the statutes and regulations which set out the specific terms and conditions of a permit which are modifiable. The expiration date is conspicuously omitted as a modifiable term.

It is urged that the General Counsel determine that the expiration date of an NPDES permit is not subject to modification. By definition the expiration date must be fixed and is thus not modifiable. Upon expiration, issu-

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[6] Title 33, United States Code, § 1311(c) provides:

"(c) The Administrator may modify the requirements of subsection (b)(2)(A) of this section with respect to any point source for which a permit application is filed after July 1, 1977, upon a showing by the owner or operator of such point source satisfactory to the Administrator that such modified requirements (1) will represent the maximum use of technology within the economic capability of the owner or operator; and (2) will result in reasonable further progress toward the elimination of the discharge of pollutants."

Title 33, United States Code, § 1342(b)(1)(C)(iii) provides that a permit can be terminated or modified for:

"(iii) change in any condition that requires either a temporary or permanent reduction or elimination of the permitted discharge."

See also 33 U.S.C. §§ 1342(b)(1)(C)(i), 1342(b)(1)(C)(ii).

ance of a new permit is the statutorily and regulatory prescribed method of action.

III

THE ACTION TAKEN BY THE REGIONAL ADMINISTRATOR WAS THE ISSUANCE OF AN NPDES PERMIT

Incorporating the above arguments, the action taken by the Regional Administrator regarding NPDES Permit No. CA0109991 was the issuance of a new NPDES permit. This conclusion is supported by the provisions of 40 C.F.R. § 125.2(a)(1). The regulations in 40 C.F.R. § 125 "do not prescribe policy or procedures for the issuance of permits by States under programs approved by the Administrator. . . ." (40 C.F.R. § 125.2(b).) NPDES Permit No. CA0109991 was issued by EPA and it appears that the position taken by EPA is that 40 C.F.R. § 125 would apply. (*See* Attachment B.)

It is recommended that the General Counsel determine that the action taken by the Regional Administrator was to issue a new NPDES permit for discharges of pollutants from the Hyperion Treatment Plant previously permitted under NPDES Permit No. CA0109991 which expired on February 1, 1977. As such, the Administrator failed to comply with applicable regulations and erroneously denied John B. Kilroy's petition for an adjudicatory hearing.

IV

A PERMITTEE SHOULD NOT BE FORCED TO IMPLEMENT A PROJECT CONTAINED IN A COMPLIANCE SCHEDULE WHEN THAT PROJECT IS BEING STUDIED IN AN EIS

NPDES Permit No. CA0109991, issued to the City of Los Angeles for the Hyperion Treatment Plant, includes in the schedule of compliance an interim sludge management project which is to be evaluated in an EIS being prepared by EPA in compliance with the requirements of NEPA and FWPCA. (*See* Attachment C at 3-4.) If

EPA continues to mandate the interim sludge management project and the EIS prepared for the project indicates another preferred, more environmentally sound alternative, an irreversible commitment of resources may occur and the NEPA process rendered purely academic, contrary to the intent and policies of NEPA.

On June 3, 1977, the State Water Resources Control Board of California determined that the Secondary Treatment Standards set pursuant to Pub. L. No. 92-500 would require large expenditures for no measurable water quality benefit. (*See* Attachment D at 2.) The interim slude management project for the Hyperion Treatment Plant is primarily based on requirements set pursuant to EPA's interpretation of 33 U.S.C. § 1311(b)(1)(B). If the primary basis for a project is determined in an EIS to be environmentally unsound, the project's adverse environmental impacts should be mitigated, where feasible. In the instant case, evidence has been presented which casts doubt on the propriety of going forward with this project. Moreover, implementation of the project prior to completion of the NEPA process forecloses any opportunity to expeditiously mitigate any negative environmental consequences. It is incumbent upon EPA to avoid taking action which could cause an irreversible and irretrievable loss of resources.

There is the absence of any compelling need to implement the interim sludge management project prior to completion of the NEPA process. In *Flint Ridge* v. *Scenic Rivers Association*, —— U.S. ——, 8 E.R.C. 2137 (1976), the Supreme Court held that where statutory limitations preclude preparation of an EIS, then the absence of an EIS will not bar an agency action. In the instant case there is no statutory or regulatory time limit on implementation of the project. NEPA requires that all federal agencies comply "to the fullest extent possible" with the directives of 42 U.S.C. § 4332. Here, EPA has not complied with the dictates of NEPA. An interim project is being mandated which could cause an irreversible and irretrievable commitment of resources when there is no statutory time limit to preclude the prior prepara-

tion of an EIS and full evaluation of each alternative, including no project.

Requestor recommends that General Counsel determine that a project which is being studied in an EIS should not be mandated until the EIS has been completed and comments received.

CONCLUSION

There is no statutory authority for the Regional Administrator to extend the expiration date of an NPDES permit, or to treat the extension of the expiration date as a modification. The statutes and regulations unambiguously provide for issuance of a permit for a fixed term, and upon expiration of the term for the issuance of a new permit.

The Regional Administrator has not complied to the fullest extent possible with the dictates of NEPA. The potential irreparable and irreversible commitment of resources mandated by the implementation of the interim slude project prior to completion of an EIS defies both logic and the law. It is recommended that the General Counsel adopt this position and provide guidance for future disputes which may arise under FWPCA.

DATED: July 12, 1977.

Respectfully submitted,

RONALD A. ZUMBRUN
ROBERT K. BEST
THOMAS E. HOOKANO

By /s/ Thomas E. Hookano
THOMAS E. HOOKANO

Attorneys for Requestor

Pacific Legal Foundation
455 Capitol Mall, Suite 465
Sacramento, California 95814
Telephone: (916) 444-0154

[Attachments Omitted]

ROBERT L. BROSIO
United States Attorney
FREDERICK M. BROSIO, JR.
Assistant U.S. Attorney
Chief, Civil Division
BARRY J. TRILLING
Assistant U.S. Attorney
1100 U.S. Court House
312 North Spring Street
Los Angeles, California 90012
Telephone: (213) 688-2450

Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Filed Aug 12, 1977

No. CV 77 3047 R

UNITED STATES OF AMERICA, PLAINTIFF

v.

CITY OF LOS ANGELES, DEFENDANT

COMPLAINT FOR INJUNCTIVE RELIEF AND CIVIL PENALTIES

[33 U.S.C. §§ 1311, 1319 and 1342]

The United States of America, by its undersigned attorney, by authority of the Attorney General, and at the request of the Administrator of the Environmental Protection Agency, alleges that:

I

This is a civil action instituted pursuant to Sections 309(a), (b), and (d) of the Federal Water Pollution Control Act Amendments of 1972, (hereinafter "the Act") [33 U.S.C. §§ 1319(a), (b) and (d)] to enjoin

the City of Los Angeles (hereinafter Defendant) from violating certain conditions of a permit issued to defendant under Section 402 of the Act [33 U.S.C. § 1342], and from violating Section 309(a) of the Act [33 U.S.C. § 1311], and to impose civil penalties against defendant for violations of said permit as provided in Section 309(d) of the Act [33 U.S.C. § 1319(d)].

II

This court has jurisdiction of the subject matter of this action pursuant to 28 U.S.C. § 1345 and 33 U.S.C. § 1319(b).

III

The defendant is an incorporated city of the State of California and is located in the County of Los Angeles in the Central District of California.

IV

At all times herein mentioned, the defendant has owned and operated the Hyperion Treatment Plant located at 12000 Vista Del Mar Boulevard, Playa Del Rey, California.

V

The Hyperion Treatment Plant discharges sewage sludge by means of an outfall sewer, known as discharge serial number 003, which extends approximately six and seven-tenths (6.7) miles into the Pacific Ocean at Santa Monica Bay, which is in the contiguous zone. This discharge is approximately 4.24 million gallons per day (4.24 MGD) and consists of digested sludge diluted with secondary effluent. The discharge contains arsenic, cadmium, chronium, copper, cyanide, lead, mercury, nickel, silver, zinc, phenols, and chlorinated hydrocarbons as well as other chemical and organic substances.

VI

The Hyperion Treatment Plant discharges treated wastewater by means of an outfall sewer, known as discharge serial number 002, which extends approximately

five and two-hundreths (5.02) miles into the Pacfic Ocean at Santa Monica Bay, which is in the contiguous zone. This discharge is approximately 360 million gallons per day (360 MGD) and consists of approximately 100 million gallons (100 MGD) of wastewater which currently receives secondary treatment with the balance (260 MGD) receiving only primary treatment.

VII

On August 18, 1975, pursuant to Section 402 of the Act and the regulations promulgated thereunder, the defendant was issued a National Pollutant Discharge Elimination System Permit (hereinafter permit) for the discharge of sewage sludge from discharge serial number 003, and for the discharge of wastewater from discharge serial number 002. The permit, Number CA 0109991, was issued by the Environmental Protection Agency (hereinafter EPA) with an effective date of September 18, 1975. A copy of the permit is attached and marked Exhibit I and is hereby incorporated herein. The city did not appeal or object to the permit conditions at the time of issuance, nor did it file any timely administrative appeal.

FIRST CLAIM

VIII

The permit provides for the termination of the discharge of sewage sludge from discharge serial number 003 thirty (30) months from the date of concept approval. The permit provides that this termination is to be accomplished in three (3) phases: (1) the elimination of no less than 1/3 of the sewage sludge presently discharged; (2) the elimination of no less than an additional 1/3 of the sewage sludge presently discharged; and (3) the termination of the discharge of the final portion of sewage sludge.

IX

In order to accomplish the termination of discharge of sludge as described in Paragraph VIII above, the permit

prescribes several interim actions. The defendant was required to provide complete approvable plans and specifications for phases 1, 2, and 3 described in Paragraph VIII not later than six (6) months from the date of concept approval.

X

Concept approval was given on October 1, 1975 by letter to Donald E. Tillman, City Engineer from Larry F. Walker of the State Water Resources Control Board (hereinafter Board), a copy of which is attached and marked Exhibit 2 and is hereby incorporated herein. The termination of the sewage sludge discharge is due to occur on or before April 1, 1978. The required approvable plans and specifications referred to in Paragraph IX were to be completed on or before April 1, 1976.

XI

Defendant has failed to meet the requirements described in Paragraphs IX and X.

XII

The permit required the defendant to submit a report of compliance fifteen (15) days after the date specified for completion of a required task. Thus, a report of compliance with the requirement referred to in Paragraphs IX and X was due on or before April 16, 1976.

XIII

The defendant has failed to meet the requirement described in Paragraph XII.

XIV

The permit required the defendant to award contracts and begin construction for the facilities set forth in the approvable plans and specifications not later than nine (9) months from the date of concept approval. Thus, construction was to begin on or before July 1, 1976.

XV

The defendant has failed to meet either of the requirements set forth in Paragraph XIV.

XVI

In addition, defendant has been aware since 1971 that sewage sludge discharge had to be eliminated. Grants of Federal and State funds amounting to $20 million have been accepted by the defendant, conditioned upon the total elimination of sludge discharges from the Hyperion works. Such grants required cessation of the discharge by December 1, 1976. The City sought, and obtained, an extension of the deadline until 1978 in a discharge permit issued to it by the Environmental Protection Agency. Thereafter, on April 23, 1976, defendant's City Council adopted a report of the Council's Public Works Committee which stated that "it is not practicable for the City to bind itself to a specific timetable for the termination of the discharge of the sewage sludge."

SECOND CLAIM

XVII

The permit provides for the upgrading of the Hyperion Treatment Plant so that all wastewater discharged through discharge serial number 002 receives secondary treatment by October 1, 1979.

XVIII

In order to accomplish the upgrading of the wastewater discharge described in Paragraph XVII the permit prescribes several interim actions that the defendant shall perform in order to meet the October 1, 1979 deadline. These interim actions are as follows:

Tasks	Completion Date	Report of Compliance
Complete draft facility plan	12/19/75	12/31/75
Progress report	7/1/76	7/15/76
Complete final plans and specifications	12/1/76	12/15/76
Award contract and begin construction	1/1/77	1/15/77
Progress reports	7/1/77	7/15/77
	1/1/78	1/15/78
	7/1/78	7/15/78
	1/1/79	1/15/79
Complete construction	9/1/79	9/15/79
Operational level attained	10/1/79	10/15/79

XIX

The defendant has violated the terms of the permit and has failed to comply with the terms and conditions of the permit in, among other things, the following respects:

A) The interim action of completing a "draft facility plan" on or before December 19, 1975, has not been performed by defendant.

B) The interim action of completing "final plans and specifications" on or before December 1, 1976, has not been performed by the defendant.

C) The interim action to "award contracts and begin construction" on or before January 1, 1977, has not been performed by the defendant.

D) On December 19, 1975, the defendant submitted a "preliminary final draft" of the "draft facility plan" called for in the permit. The defendant's submittal was in preliminary form and did not constitute compliance with the permit requirement for a "complete draft facility plan".

E) On July 8, 1976, the defendant submitted a progress report which stated that "copies of the Final Draft" of the facility plan were scheduled to be available by the end of March, 1977. The final draft of the facility plan, which was to be completed on December 19, 1975, has not been submitted.

G) On January 7, 1977, the defendant submitted a compliance report stating that the final plans and specifications as required by December 1, 1976, were not complete, and that awarding of the contract and the beginning of construction as required by January 1, 1977, had not yet been undertaken.

XX

Section 309(b) of the Act [33 U.S.C. § 1319(b)] provides that the Administrator may commence a civil action for appropriate relief, including permanent or temporary injunction, for any violation of any permit condition in a permit issued pursuant to Section 402 of the Act [33 U.S.C. § 1342].

XXI

Section 309(d) of the Act [33 U.S.C. § 1319(d)] provides that any person who violates any term or condition of a permit issued under Section 402 of the Act [33 U.S.C. § 1342] shall be subject to a civil penalty not to exceed TEN THOUSAND DOLLARS ($10,000.00) per day of violation.

XXII

The defendant's violations of NPDES Permit No. CA 0109991 are of a continuing nature for which there is no adequate remedy at law, and are preventing the plaintiff from achieving the goals mandated by the Federal Water Pollution Control Act, as amended. [33 U.S.C. § 1251 et seq.]

WHEREFORE, plaintiff United States of America demands judgment against the defendant City of Los Angeles:

a) To enjoin further violations of NPDES Permit No. CA 0109991.

b) For penalties in the sum of TEN THOUSAND DOLLARS ($10,000.00) for each day of violation of NPDES Permit No. CA 0109991.

c) For such other and further relief as the Court may deem just and proper.

d) For the following schedule of compliance for the elimination of the discharge of sewage sludge.

Phase	Task	Completion Date	Report of Compliance
I	Reduce sludge discharge by 40 tons per day.	August 1, 1979	August 15, 1978
II	Reduce sludge discharge by 40 tons per day for a cumulative reduction of 80 tons per day.	April 1, 1979	April 15, 1979
III	Reduce sludge discharge by 40 tons per day for a cumulative reduction of 120 tons per day.	October 1, 1979	October 15, 1979
IV	Eliminate all remaining discharge of sludge.	April 1, 1980	April 15, 1980

e) For the following schedule of compliance to upgrade the Hyperion Treatment Plant so that all wastewater discharged through discharge serial No. 002 receives secondary treatment.

Task	Completion Date	Report of Compliance
A-4 and A-12 (Secondary Treatment)		
Complete facility plan	December 1, 1977	December 15, 1977
Complete final plans and specifications	March 1, 1978	March 15, 1978
Advertise Contracts for construction	April 1, 1978	April 15, 1978
Award Contracts for construction	May 1, 1978	May 15, 1978
Begin Construction	June 1, 1978	June 15, 1978
Progress Reports	December 1, 1978	December 15, 1978
	June 1, 1979	June 15, 1979
	December 1, 1979	December 15, 1979
Complete Construction	December 1, 1980	December 15, 1980
Operational Level attained	January 1, 1981	January 15, 1981

Each Report of Compliance shall be mailed to Director, Enforcement Division, EPA, Region IX, 100 California Street, San Francisco, California 94111, not later than fifteen (15) calendar days after each completion date. Each report shall detail compliance or noncompliance with the specific task and date. If noncompliance is being reported, the reason(s) for such noncompliance shall be stated, plus an estimate of the date when the defendant shall be in compliance.

f) That Donald C. Tillman, City Engineer for the defendant, or his successor, be named the responsible official for the purpose of insuring that the Reports of Compliance requested by Subparagraphs (d) and (e) of this prayer are properly prepared and submitted in a timely fashion.

g) That the defendant pay a civil penalty of One Thousand Dollars ($1,000.00) for each and every day the defendant violate any of the requirements of Paragraph XVI(d) and (e) as hereinabove set forth.

DATED: This *10th* day of August, 1977.

ROBERT L. BROSIO
United States Attorney
FREDERICK M. BROSIO, JR.
Assistant U.S. Attorney
Chief, Civil Division

/s/ Barry J. Trilling
BARRY J. TRILLING
Assistant U.S. Attorney

Attorneys for Plaintiff

PROOF OF SERVICE BY MAIL

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I, the undersigned, say: I am a citizen of the United States and a resident of the County of Los Angeles. I am over the age of 18 and not a party to the within action or proceeding. My business address is

200 North Main Street
1800 City Hall East
Los Angeles, CA 90012

On February 22, 1978, I served the within

CITY'S MEMORANDUM IN REPLY TO MOTION FOR CLARIFICATION OF ORDER

on the person(s) indicated below, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid in the United States mail at Los Angeles, California, addressed as follows:

Raymond W. Mushal, Esq.
Attorney, Pollution Control Section
Land and Natural Resources Division
U.S. Department of Justice
Washington, D.C. 20530

Joan Z. Bernstein, Esq.
General Counsel
U.S. Environmental Protection Agency
401 M Street, S.W.
Waterside Mall
Washington, D.C. 20460

Lisa K. Friedman, Esq.
Water Quality Division (A-131)
U.S. Environmental Protection Agency
Washington, D.C. 20460

Anthony O. Garvin, Esq.
Assistant Regional Counsel
U.S. Environmental Protection Agency, Region IX
215 Fremont Street
San Francisco, CA 94105

Robert K. Best, Esq.
Pacific Legal Foundation
455 Capitol Mall
Suite 465
Sacramento, CA 95814

Stanley E. Remelmeyer, Esq.
City Attorney
3031 Torrance Boulevard
Torrance, CA 90503

Richard R. Terzian, Esq. / Burke, Williams & Sorensen
707 Wilshire Blvd., Suite 3300, Los Angeles, CA 90017

☒—Federal—I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on February 22, 1978, at Los Angeles, California.

/s/ Hilda Y. Alatorre
HILDA Y. ALATORRE

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY
Region IX
100 California Street
San Francisco, California 94111

Sept. 2, 1977

Mr. Thomas E. Hookano
Pacific Legal Foundation
455 Capitol Mall, Suite 465
Sacramento, CA 95814

Re: Request for Stay of Enforcement of NPDES Permit No. CA0109991 for City of Los Angeles Hyperion Treatment Plant

Dear Mr. Hookano:

In response to your request dated August 18, 1977, for a stay of enforcement of National Pollutant Discharge Elimination System (NPDES) Permit No. CA0109991 issued on June 2, 1977, for the Hyperion treatment plant owned by the City of Los Angeles, it is my determination that a stay of enforcement would not be warranted or in the public interest for the following reasons. First, the Complaint filed by the United States against the City of Los Angeles in the U.S. District Court for the Central District of California (C 77-3047-R) does not name as parties any of the petitioners seeking review of the permit in the U.S. Court of Appeals for the Ninth Circuit (C 77-2909). The enforcement action thus does not seek to impose penalties or otherwise affect the legal rights of the petitioners.

Second, it is the position of EPA that Section 509 (b) (1) of the Federal Water Pollution Control Act Amendments of 1972 (33 U.S.C. § 1369 (b) (1)) precludes review of the terms and conditions of the subject permit with the exception of the expiration date of the permit. The only change made by EPA to NPDES Permit No. CA0109991 on June 2, 1977, was to extend the expiration date of the permit from June 30, 1977, to December 17, 1979. *The substantive conditions of the permit remained in effect as issued on August 18, 1975.* Review of the substantive conditions of the permit is precluded at this date in the absence of new information not available in 1975. Since the request for a stay of enforcement submitted by the Pacific Legal Foundation does not indicate that additional information exists which was not available when the permit was issued in 1975, there does not appear to be any compelling reason to delay enforcement of the substantive conditions of the permit.

Finally, the enforcement action filed by the United States against the City of Los Angeles concerns, in part, violations which occurred prior to the extension of the expiration date of the permit on June 2, 1977. The review in the Ninth Circuit will not affect the liability of the City of Los Angeles for violations of the permit which occurred prior to June 2, 1977, since the Petition for Review seeks review only of the permit as issued on that date. There is thus no reasonable basis for staying enforcement of the permit.

Sincerely,

/s/ R. L. O'Connell
for PAUL DE FALCO, JR.
Regional Administrator

Exhibit No. 6

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
Washington, D.C. 20460

DECISION OF THE GENERAL COUNSEL ON MATTERS OF LAW PURSUANT TO 40 C.F.R. SECTION 125.36(m)

No. 66

In the matter of National Pollutant Discharge Elimination System Permit for the City of Los Angeles, CA0109991, the Regional Administrator has certified three issue of law to the Office of General Counsel for decision pursuant to 40 C.F.R. Section 125.36(m). The parties, having had the opportunity to provide written briefs in support of their respective positions,[1] present the following issues.

ISSUES OF LAW NO. I AND II

Questions Presented

1. Must EPA conduct an informal public hearing prior to taking action to extend the expiration date of an NPDES permit where public notice of the proposed action was published more than 30 days in advance of the action?

2. Must a detailed factual record be developed prior to modification of an NPDES permit where the only modification made to the permit is the extension of the permit's expiration date? [2]

[1] Briefs were filed by EPA Region IX and by the Pacific Legal Foundation on behalf of John B. Kilroy.

[2] Kilroy urges that I address the following issue:

Whether there is authority under the applicable statutes or regulations to extend the expiration date of an existing National Pollutant Discharge Elimination System (NPDES) permit, or whether the action taken by EPA with regard to Permit No. CA 0109991 was the issuance of a new permit.

Decision

EPA has the authority to extend the expiration date of an NPDES permit by modification of the permit. In any permit modification proceeding an opportunity for public hearing must be provided, but a hearing must be held only if the Regional Administrator finds that there is a significant degree of public interest in the permit modification. Since Kilroy does not specifically argue that the record supporting the permit modification is inadequate this question need not be addressed.

Discussion

On April 27, 1977 a notice of a proposed modification of the NPDES permit issued to the City of Los Angeles for its Hyperion sewage treatment plant was published in the Los Angeles Times. The proposed change was to the expiration date of the permit, which was then June 30, 1977. On June 2, 1977, the permit was modified to extend its expiration date to December 17, 1979. No requests for a public hearing prior to modification of the permit pursuant to 40 C.F.R. § 125.34 were made. On June 13, 1977, John B. Kilroy requested an adjudicatory hearing pursuant to 40 C.F.R. § 125.36. That request was denied but three issues of law were referred to the General Counsel.

Kilroy is correct in arguing that federally-issued NPDES permits, no less than State-issued permits, are subject to the requirement that they be for fixed terms not exceeding five years. FWPCA § 402(b)(1)(B) read in conjunction with § 402(a)(3)), 40 CFR § 125.25. But this does not resolve the questions he raises. This requirement of the statute, and EPA regulations, does not forbid modification of the expiration date of a permit, so long as the permit, as modified, as a fixed expiration date and that date is no more than five years from the date it was established. The purpose of § 402(b)(1)(B) is clear; to insure that at intervals not greater than five

years the terms and conditions of a permit be subject to reevaluation by the Agency (or State) and that the public have an opportunity to participate in this reevaluation.[3] This purpose is not compromised by a modification of an expiration date such as occurred here, since in no event will more than five years elapse between opportunities for the Agency, and the public, to decide whether the requirements placed on the discharger should be changed.[4]

Kilroy also argues that the FWPCA and EPA regulations provide authority to modify only certain provisions of a permit and do not provide such authority with regard to the expiration date. But the Act, in § 402(b)(1)(C), says only that permits must be subject to modification for cause, without restricting the power to modify to any particular terms of a permit. Similarly, the three specific causes for modification set out in § 402(b)(1)(C) are clearly inclusive, rather than exclusive. And 40 C.F.R. § 125.22(a)(2) provides that a permit may, for cause, be modified "in whole or in part". Nothing in the statute or regulations expressly or implicitly forbids modifications of expiration dates of permits.[5]

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[3] While the proposed change in a permit may be only to its expiration date, any issue relevant to the extension, such as whether the requirements placed on the discharger should be modified, could be raised.

[4] Kilroy argues that the ability to modify the expiration date can be abused and used to frustrate the public participation requirements of the Act. Kilroy argues primarily in terms of hypothetical situations, however, and has failed to show that the practical ability of the public to participate in this particular proceeding was infringed. Whether or not abuse may occur in another situation must await another day.

[5] The provisions of 40 C.F.R. § 125.23(d) cover a particular situation when permits may be modified but do not in any way limit the Agency's ability to modify other terms and conditions. Section 125.28, characterized by Kilroy as a permit modification provision, is actually a provision for *adjustment* of effluent limitations or standards to reflect, on a case by case basis, credit for pollutants in intake water. It serves the function, therefore, of defining the terms of a permit, rather than of changing them subsequent to permit issuance. Section 301(c) of the Act serves a similar function with respect to defining BATEA for discharges who lack the economic capability to meet the national effluent limitations guidelines. Section 301(c) variances will not modify permits, but will be relevant to the requirements to be established in permits which will expire on or after July 1, 1983.

With regard to any permit modification, including a modification of an expiration date, the Agency is required to provide public notice of its intent to modify the permit and must provide an opportunity for a public hearing *See* 40 CFR §§ 125.22(a)(2), 125.32, 125.34. In addition, any interested person may request an adjudicatory hearing pursuant to § 125.36. Thus, the right of the public to be periodically apprised of the status of a discharger's permit and to participate in the permitting process is amply assured. But a public hearing need not necessarily be held. Section 402(b)(3) of the Act provides only that the public "receive notice of each application for a permit and . . . *an opportunity* for a public hearing before a ruling on each application. . . ." (emphasis added.)[6] This is precisely what the Agency's regulations provide. Section 125.32 requires public notice of the proposed issuance or modification of a permit while § 125.34 of EPA's NPDES regulations provides that the Regional Administrator *may* hold a public hearing when he determines either that there is a significant degree of public interest in a permit (§ 125.34(a)) or when he determines that a hearing may provide useful information (§ 125.34(d)). At least where there is little or no public interest expressed after public notice of a proposed modification the question of whether to hold a public hearing prior to modification of the permit is wholly discretionary.

Finally, it may be observed that Kilroy has failed to show that his legal arguments have any practical implications. Whether EPA modified the old permit or issued a new one has not been shown to have any bearing on the public participation procedures to be followed. In either case public notice would be given and opportunity for public and/or adjudicatory hearings provided. In particular, it does not appear that Kilroy's own request for

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[6] *Cf.* The Administrative Procedure Act, 5 U.S.C. §§ 553(c), 554(a), 554(c).

an adjudicatory hearing would have had to be handled any differently.

Issue of Law No. III

Question Presented

May the expiration date of an NPDES permit be extended where a project covered by the compliance schedule of the permit is being evaluated by EPA in an Environmental Impact Statement for the purpose of determining whether a grant should be made to assist in the construction of the project? [7]

Decision

EPA has the authority to extend the expiration date of a permit which orders a permittee to go forward with a project despite the fact that the same project is being evaluated in an Environmental Impact Statement (EIS) for the purpose of determining whether a grant should be made to assist in the project's construction.

Discussion

The only legal obstacle to requiring Los Angeles to proceed with the sludge management project which Kilroy appears to raise is that it would conflict with NEPA. But § 511(c) of the FWPCA clearly provides that the EIS requirements of NEPA do not apply to the permit at issue here. The permit for the Hyperion plant is neither a grant of federal financial assistance nor a permit for a new source as defined in Section 306(a)(2) of the FWPCA. Obviously, if NEPA does not apply to the permit issuance it does not apply to extension of the expiration date.

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[7] Kilroy phrases the issue as:

> Whether EPA should require that a permittee go forward with a project contained in an NPDES compliance schedule when that project is being studied in an environmental impact statement (EIS) pursuant to the requirements of the National Environmental Policy Act (NEPA), 42 U.S.C. §§ 4332, *et seq.*, and the Federal Water Pollution Control Act (FWPCA), 33 U.S.C. § 1281, *et seq.*

Recently, in *Pacific Legal Foundation* v. *Quarles*, No. 77-521-HP (C.D. Cal. July 20, 1977) the court, dealing with issues raised with regard to the very permit involved here, held that, "the language of Section 511(c) leads to the conclusion that the EPA can, without an EIS, order Los Angeles to build the interim sludge disposal project while the EPA is prevented, until it prepares an EIS, from awarding a grant to help pay for the project." Slip op. at 6. There thus appears to be no reason why the pendency of the EIS concerning funding of the sludge management project causes any legal problems to arise with regard to the NPDES permit.

October 18, 1977

/s/ Joan Z. Bernstein

AFFIDAVIT OF DONALD CALVIN TILLMAN

I, DONALD CALVIN TILLMAN, being duly sworn, hereby depose and say:

1. I am currently employed as City Engineer of the City of Los Angeles (City hereinafter). As such, I manage the operations of the Bureau of Engineering, which is responsible for design and construction engineering for the City's wastewater system. The Bureau is contained within the City's Department of Public Works.

2. I have knowledge of and supervise the engineering for the following proposed projects:

a. The conception, design, and construction of an interim system to process and dispose of sludge other than by ocean discharge from the Hyperion Treatment Plant (interim sludge hereinafter);

b. The conception, design, and construction of a permanent system to process and dispose of sludge (ultimate sludge hereinafter); and

c. The conception, design, and construction of facilities to convert the Hyperion Treatment Plant from partial (presently about 30% or 100 million gallons of 330 million gallons per day) to full secondary treatment (full secondary conversion hereinafter).

3. The currently estimated capital cost of interim sludge is $15,800,000.00.[1] To date, the City has by contract committed $2,037,614.00 and appropriated an additional $3,510,736.00 of its funds to this project.

4. The estimated capital cost of ultimate slude is currently $76 million.[1, 2] The conception and design of this system have not been completed.

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[1] Such costs inculde projected contract commitments, City labor, and City overhead (indirect costs calculated as a proportion of City labor).

[2] Exclusive of City expenditures for the LA/OMA Project, which is discussed hereinafter at Paragraph 13.

5. The currently estimated capital cost of full secondary conversion is $282,000,000.00.[1] This amount includes the estimated $55,767,000.00 cost of the proposed Sepulveda Water Reclamation Plant. To date, the City has appropriated about $12,000,000.00 for project design.[3] In addition, the City and its contract agencies have funded about $3,200,000.00 of the $16,000,000.00 cost of the recently completed Los Angeles/Glendale Water Reclamation Plant. The Sepulveda and Los Angeles/Glendale Water Reclamation Plants provide additional capacity which is necessary to give secondary treatment to all of the City's wastewaters, and these facilities were located upstream of the Hyperion Treatment Plant due to the limited space at the Hyperion site, economic considerations, and water reclamation needs.

6. I am informed that, aside from the Los Angeles/Glendale Water Reclamation Plant, the capital and indirect costs of the interim sludge, ultimate sludge, and full secondary conversion projects are grant eligible. The City could receive a maximum of 75% and 12½% grant funding from the Federal Government and State of California, respectively.

The sludge and full secondary conversion projects are mandated to be constructed under the National Pollutant Discharge Elimination System (NPDES hereinafter) Permit which is the subject of the petitions for review before the Court.

No grant funds for any of these projects, aside from the Los Angeles/Glendale Water Reclamation Plant, have been received as yet by the City.

7. Operation and maintenance costs (all amounts in this paragraph are direct costs) for the City's existing wastewater system, of which the Hyperion Treatment Plant constitutes a major part, are estimated for fiscal year 1977-78 to be $13,335,132.00. The estimated annual operation and maintenance costs for interim sludge are an additional $10,726,000.00; such costs for ultimate sludge cannot be estimated at this time. The annual

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[3] Such amount does not include City overhead.

operation and maintenance costs of full secondary conversion (including the upstream facilities) is estimated to be an additional $13,000,000.00.

I am informed that operation and maintenance costs are not grant eligible.

8. The Los Angeles City Controller's Preliminary 1967-77 Report indicates that the total city expenditures for fiscal year 1976-77 were $934,619,521.00. Of this amount, controllable expenditures totaled $755,827,284.00, and noncontrollable expenditures totaled $178,842,237.00.

9. Having previously taken a number of actions committing resources to these projects, the City has adopted the following course of action with regard to the NPDES Permit requirements, as recommended by the Mayor and adopted by the City Council on September 1, 1977:

a. Proceed with a good faith effort to cease the ocean discharge of sludge on an interim basis;

b. Support legislative efforts in Congress to modify the secondary treatment requirements under the Federal Water Pollution Control Act; and

c. Protect the City's interests by defending or initiating litigation.

10. The City questions the scientific and environmental wisdom of the Environmental Protection Agency (EPA hereinafter) policy to cease the ocean discharge of sludge as applied to the Hyperion Treatment Plant, given the serious problems which exist with land and other alternative disposal methods. The City is challenging the legality of the EPA's sludge-out policy in the courts. Until such time as that policy is invalidated, the City intends to demonstrate its good faith by proceeding with the interim sludge project. The City is also proceeding in good faith with the project to convert the Hyperion Treatment Plant to full secondary treatment, although pending legislative modifications may delay or obviate the necessity of this project.

11. The Board of Public Works of the City of Los Angeles approved on November 2, 1977 a two-phase interim sludge-out schedule whereby construction of Phase I and a 25% reduction of current ocean sludge discharge

will be attained by July 15, 1979, and construction of Phase II and the 100% elimination of current ocean sludge discharge will be attained by April 1, 1980. The estimated total cost of Phase I (design, construction, and contract administration) is $11,033,000.00, with Phase II requiring the expenditure of an estimated additional $4,467,000.00 ($2,267,000 for Phase II construction and $2,000,000.00 for centrate treatment to be constructed later).

12. On October 20, 1969 the City entered into a joint powers agreement with the Sanitation Districts of Orange County, the Sanitation Districts of Los Angeles County, the Ventura Regional County Sanitation District, and the City of San Diego by which was created the Southern California Coastal Water Research Project Authority (SCCWRP hereinafter). The operating term of SCCWRP, which has an independent Scientific Consulting Board, has been extended by agreement until June 30, 1979. The purposes of SCCWRP include increasing the scientific knowledge of the coastal waters of Southern California in order to ensure the protection and conservation of marine resources and to gather and analyze data regarding the near-shore environmental effects of treated wastewater and wastewater solids diffusion. The results of SCCWRP studies are issued in technical reports. To date, the cost to the City of the SCCWRP studies has been $1,403,743.00, which represents the City's proportionate cost of SCCWRP based upon its percentage of the total flow discharged to the Pacific Ocean from the sewage plants under the authority of the signatories to the agreement. In addition to the joint powers agreement, SCCWRP has received separate research grants from the EPA, the California State Water Resources Control Board (SWRCB hereinafter), and others.

13. On October 9, 1974 a joint powers agreement was entered into by the City, the Sanitation Districts of Orange County, and the Sanitation Districts of Los Angeles County to establish the LA/OMA Project (short for Regional Wasterwater Solids Management Program for the Los Angeles/Orange County Metropolitan Area). The LA/OMA Project, whose purpose is to evaluate alterna-

tive sludge management systems and develop a regional sludge management plan, includes participation by Region IX of the EPA and the SWRCB. The estimated total project cost is $3,400,000.00. I am informed that all but $75,000.00 of this amount is grant eligible, with EPA funding $75%, the SWRCB funding another 12½%, and the three local agencies equally sharing the cost of the remaining 12½%. The $75,000.00 figure represents the cost, shared equally by the local agencies, of a study of the ocean disposal of sludge, which has been deemed ineligible for funding by the EPA and the SWRCB. The City has appropriated $300,000.00 and has actually committed by contract $163,541.00 of its funds to the LA/OMA Project, whose final report is due by mid-1979.

Executed on November 23, 1977 at Los Angeles, California.

/s/ Donald Calvin Tillman
DONALD CALVIN TILLMAN

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

Subscribed and sworn to before me this 23rd day of November, 1977 at Los Angeles.

/s/ M. Jean Drumright
M. JEAN DRUMRIGHT

[OFFICIAL SEAL] Notary Public in and for the State of California, Los Angeles County. My Commission Expires Oct. 11, 1981.

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
Region IX
215 Fremont Street
San Francisco, Ca. 94105

In reply refer to:

E-4-1
RIN 77F-91
David M. Shell
Law Clerk
Pacific Legal Foundation
455 Capitol Mall, Suite 465
Sacramento, Ca. 95814

Dec. 20, 1977

Dear Mr. Shell:

As you requested in your letter of December 12, 1977, pursuant to the Freedom of Information Act, enclosed is a copy of the public notice for the City of Los Angeles—Hyperion Treatment Plant National Pollutant Discharge Elimination System modification which extended the expiration date of the permit to June 30, 1977.

If you have any questions, please contact our Permits Branch at (415) 556-3450.

Sincerely,

/s/ R. L. O'Connell
R. L. O'CONNELL
Director, Enforcement Division
Enclosure

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Special Announcements 1900

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- ABBOTT SCIENTIFIC
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  AIRESEARCH MANUFACTURING CO
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  AMERICAN MICROSYSTEMS
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- ANACONDA
- ACMC
- API—RH
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- ARROWSMITH
  TOOL & MFG. CORP.
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- AVERY INTERNATIONAL
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  BAKER OIL TOOLS INC
- BARCO OF CALIF.
- BECHTEL—854
  BELL OPERATIONS CORP
  An equal opportunity employer
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  BELL HELICOPTER INT'L
  Bedford, Texas
- BELL & HOWELL
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  Field Engineering Corp.
  BENNETT
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- BERTEA CORPORATION
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- C GAW LABORATORIES
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- MOTHERWOOD MATERNITY
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  NETTER Mfg Co
  Equal Opportunity Employer M/F
- Norman Engineering-RH
- OCCIDENTAL LIFE
- Occidental Research
  OMRON
  Fine Inquiry Dept
- Optical Radiation
- OTI
- PABST BREWING CO.
- PAPER MATE #1
- Paul Munroe Hydraulics
- PENNSYLVANIA LIFE INS.
- PETERBILT—854
- Piedmont Management
  POMONA Valley
  Community Hospital
- Professional Seminars—845
- #1 QUOTRON SYSTEMS
- RACHELLE LABS, INC.
- RCA—842
  REDMAN
  MOBILE HOMES INC.
- #1 REVELL INC.
- RITE AUTOTRONICS
- Rockwell Int'l.
- Rockwell International
  COLLINS RADIO NEWPORT BEACH
- Rockwell—842
- ROLM—854
- ROSS LOOS—R
  ROSEMOUNT, INC.
  An Equal Opportunity Employer m/f
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  Engineering & Construction
- SARGENT INDUSTRIES
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  The Boeing Company
  Getting people together.
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- Shepherd Machinery 10
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- SINGER
- ☆ SMITH TOOL
- SOLAR-SAN DIEGO
- SPACELABS, INC.
- Spar Aerospace—842
- SPECTROLAB-RH

- CURTIS INDUSTRIES
  CURTIS WRIGHT
  Equal Opportunity Employer
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- ENCINO HOSPITAL
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  Parker Seal
- EPRI—854
- Superior Industries
- System Development
- SYVA—854
- TASK CORP.
  TEKTRONIX, INC.
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- TELEDYNE INET
- TELEDYNE—RH

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HOUSEMAN, live-in, must like [illegible]
[illegible] 3 yr. Sml sal [illegible]
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LEGAL NOTICES 1900

LEGAL NOTICES 1900

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
LOS ANGELES REGION
107 South Broadway—Room 4027
Los Angeles, California 90012
(213) 620-4460

Public Notice No. 76-153

NOTICE
Applications for and Revision of Waste Discharge Requirements
(National Pollutant Discharge Elimination System Permits)

The following Waste Discharge Requirements are proposed to be revised or amended:

NPDES NO.	NAME
CA 0109991	City of Los Angeles, Hyperion Treatment Plant

DISCHARGE LOCATION (Receiving Waters)	TYPE OF WASTE VOLUME
12000 Vista Del Mar Boulevard, Playa del Rey (Santa Monica Bay)	municipal waste water —1,256,900 cubic meters (340 million gallons) per day

On the basis of preliminary staff review and application of lawful standards and regulations, the California Regional Water Quality Control Board, Los Angeles Region, tentatively proposes to revise waste discharge requirements, including effluent limitations and special conditions. Persons wishing to comment upon or object to the tentative discharge requirements are invited to submit same in writing to the above address no later than January 23, 1977. All comments or objections received by that date will be considered in the formulation of final determinations regarding the waste discharges.

If no objections are received, the Regional Board will revise waste discharge requirements. A public hearing will be held by the Board on January 24, 1977, at 10:00 a.m., 107 South Broadway, Room 1138, Los Angeles, California. Interested persons are invited to attend. The Board will hear any testimony pertinent to the waste discharge and the tentative waste discharge requirements. Oral statements will be heard, however, for the accuracy of the record, all important testimony should be in writing.

The hearing on City of Los Angeles, Hyperion Treatment Plant will be a joint hearing with the Environmental Protection Agency, Region IX who also proposes to modify NPDES Permit No. CA0109991.

The Reports of Waste Discharge, revised documents, tentative requirements, comments received, and other information are on file and may be inspected at 107 South Broadway, Room 4027, Los Angeles, California, 90012, between the hours of 8:00 a.m. and 5:00 p.m. Arrangements for copies may be made.

Date Dec. 15, 1976

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
Region IX
215 Fremont Street
San Francisco, Ca. 94105

In reply refer to:

E-4-1
RIN 77F-91

David M. Shell
Law Clerk
Pacific Legal Foundation
455 Capitol Mall, Suite 465
Sacramento, Ca. 95814

Dec. 20, 1977

Dear Mr. Shell:

As you requested in your letter of December 12, 1977, pursuant to the Freedom of Information Act, enclosed is a copy of the public notice for the City of Los Angeles—Hyperion Treatment Plant National Pollutant Discharge Elimination System modification which extended the expiration date of the permit to June 30, 1977.

If you have any questions, please contact our Permits Branch at (415) 556-3450.

Sincerely,

/s/ R. L. O'Connell
R. L. O'CONNELL
Director, Enforcement Division
Enclosure

SUPREME COURT OF THE UNITED STATES

No. 78-1472

DOUGLAS M. COSTLE, Administrator,
Environmental Protection Agency, PETITIONER

v.

PACIFIC LEGAL FOUNDATION, ET AL.

ORDER ALLOWING CERTIORARI. Filed June 11, 1979

The petition herein for a writ of certiorari to the United States Court of Appeals for the Ninth Circuit is granted.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1979 297846 41